



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 17 फरवरी, 2020 / 28 माघ, 1941

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 29th July, 2019

No. Shram(A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	553/15	Chamel Singh	Fruit Technologist, H.P.	01-05-2019
2.	262/14	Roop Singh	D.F.O Karsog	03-05-2019
3.	462/15	Chet Ram	D.F.O. Suket	03-5-2019
4.	291/15	Jagdish Kumar	D.F.O. Suket	04-05-2019
5.	751/16	Dhanwant Kumar	D.F.O. Suket	04-05-2019
6.	239/14	Naresh Kumar	D.F.O.Suket	06-05-2019
7.	87/15	Ramesh Kumar	D.F.O. Suket	06-05-2019
8.	265/15	Surender Lal	D.F.O. Kullu	06-05-2019
9.	63/13	Leela Devi	M/S Suket Hospital Pvt. Ltd.	08-05-2019
10.	875/16	Prakash Chand	D.F.O. Suket	09-05-2019
11.	91/17	Pawan Kumar	D.F.O. Suket	09-05-2019
12.	37/18	Bindu Bala	G.M. M/S Virender Dogra P.Project	14-05-2019
13.	09/16	Prem Dei	E.E. I&PH/HPPWD, Killar	14-05-2019
14.	138/14	Vijay Kumar	Registrar CSK HPKVV Palampur	20-05-2019
15.	141/14	Om Prakash	Registrar CSK HPKVV Palampur	20-05-2019
16.	140/14	Suresh Kumar	Registrar CSK HPKVV Palampur	20-05-2019
17.	206/14	Pawna Devi	Registrar CSK HPKVV Palampur	20-05-2019
18.	193/14	Pawna Devi	Registrar CSK HPKVV Palampur	21-05-2019
19.	197/14	Ajay Kumar	Registrar CSK HPKVV Palampur	21-05-2019
20.	174/14	Joginder Singh	Registrar CSK HPKVV Palampur	22-05-2019
21.	112/16	Ravi Kumar	I & PH Dalhousie	23-05-2019
22.	36/13	Vipan Kumar	M/s Omid Engineering	27-05-2019
23.	164/14	Rekha Devi	Registrar CSK HPKVV Palampur	27-05-2019
24.	165/14	Pushpinder	Registrar CSK HPKVV Palampur	27-05-2019
25.	176/13	Janak Raj	M/S Him Cylinder Ltd.	28-05-2019
26.	440/15	Chain Singh	E.E. I&PH Dalhousie	28-05-2019
27.	769/16	Suresh Kumar	E.E. HPPWD Nurpur & others	28-05-2019
28.	419/16	Rattan Chand	E.E. HPPWD Nurpur & others	28-05-2019
29.	223/16	Raj Kumar	E.E. HPPWD Nurpur & others	28-05-2019
30.	187/14	Shiv Kumar	Registrar CSK HPKVV Palampur	29-05-2019
31.	194/14	Ram Prasad	Registrar CSK HPKVV Palampur	29-05-2019
32.	07/19	Lohlu Ram	E.E. I&PH, Chamba	14-05-2019
33.	214/14	Sunil Kumar	Registrar CSK HPKVV Palampur	30-05-2019
34..	216/14	Rakesh Kumar	Registrar CSK HPKVV Palampur	30-05-2019
35.	897/16	Prem Singh	E.E. HPPWD, Nurpur & others	30-05-2019
36.	199/14	Ravi Kumar	Registrar CSK HPKVV Palampur	31-05-2019
37.	182/14	Dharminder Singh	Registrar CSK HPKVV Palampur	31-05-2019
38.	502/16	Bhushan	HPPWD, Nurpur & others	31-05-2019

By order,

JAGDISH CHANDER SHARMA, IAS
Principal Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 553/2015
Date of Institution : 04-12-2015
Date of Decision : 01-5-2019

Shri Chamel Singh s/o Shri Charnu Ram, r/o Village Hatwas, Tehsil & District Kangra,
H.P. ..Petitioner.

Versus

The Fruit Technologist, H.P. Fruit Canning Unit Nagrota Bagwan, District Kangra, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Shri Chamel Singh s/o Shri Charnu Ram, R/O Village Hatwas, Tehsil & District Kangra, H.P. during June, 2014 (as alleged by workman) by the Fruit Technologist, H.P. Fruit Canning Unit, Nagrota Bagwan, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar on muster roll by the respondent w.e.f. 1-7-1995 and had worked uninterruptedly upto May, 2014. During this period, the petitioner had worked alongwith other co-workmen, namely, S/Shri Surinder Kumar, Chain Singh, Vinod Kumar, Ashok Kumar, Faquir Chand, Nirja Kumar, Pawan Kumar, Bansilal and S/Smt. Kanta Devi, Pushpa Devi, Kanchan Devi, Aruna Devi, Ajudhiya Devi, Rajni Devi, Seema Devi, Chanchla Devi, Sushma Devi, Sakindra Devi, Indira Devi, Babli Devi, Bimla Devi and Kamla Devi. H.P. Fruit Canning Unit at Nagrota Bagwan was set up in the year 1980 by the Horticulture Department of the Government of Himachal Pradesh. In this unit different types of manufacturing processes are carried out with the aid of power. In the unit, the department had engaged services of skilled and semi skilled labourers and daily waged labourers to perform various duties. During the period from July, 1995 upto May, 2014 the petitioner had completed more than 240 days in the years 1996, 1999, 2001 to 2003 and w.e.f. 28-6-2011 upto 31.5.2014. In some years due to fictional breaks given by the respondent, he could not complete 240 days. The services of daily waged workmen were being utilized by the respondent in two batches, one from the first of every month upto the 15th and the second from the 16th till the end of the month. This practice was adopted by the respondent so that the petitioner and other workmen could not complete 240 days of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The respondent had not

adhered to the provisions of Section 25-F of the Act and in the year 1997 the services of the petitioner alongwith S/Shri Faquir Chand, Ashok Kumar and Niraj Kumar had been illegally terminated by the respondent. They immediately had approached the Hon'ble Administrative Tribunal and on the basis of interim order dated 23-4-1998, were engaged by Assistant Fruit Technologist, Fruit Canning Unit, Nagrota Bagwan on 1st May, 1998. However, work for only two days in the month of May, 1998 had been provided to the petitioner. Thereafter, his services were engaged and disengaged by giving him fictional breaks, whereas the other workmen who had also filed the OA alongwith the petitioner were given continuous work without breaks and had completed more than 240 days. The services of the petitioner had been utilized by the respondent at different sale centres, as detailed in para 8 of the petition. Shri Vinod Kumar had been engaged by the respondent on 25.5.1991 and he had continuously worked upto 31.12.1993. Thereafter, he had abandoned the job. However, he was re-engaged in the year 1997 without any approval from the department. Since, Shri Vinod Kumar had not moved the Court to condone his absence period, he had lost his seniority and on his re-engagement had become junior to the petitioner. His absence period was condoned by the respondent himself and he was given the seniority from the date of his initial engagement. The services of the petitioner were unlawfully terminated by the respondent w.e.f. June, 2014. The respondent had also not adhered to the principle of 'last come first go', as person junior to him, namely, Shri Vinod Kumar and S/Smt. Ajudhya Devi, Aruna Devi, Rajni Devi, Rani Devi, Sikandra Devi, Babli Devi and Kamla Devi were retained. The respondent had resorted to unfair labour practice. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, as no fundamental or legal right of the petitioner had been infringed and that the petitioner had concealed the material facts, have been taken.

On merits, it was asserted that the petitioner was engaged on hourly contract basis on 1.7.1995 to perform various duties, as per the availability of the work. It was specifically denied that he had been engaged on daily waged basis on muster roll. Alongwith the petitioner, fifteen other workers had been working on contract basis, as additional labour, alongwith regular beldars working with the respondent. The factory under the control of the respondent is being run as a demonstration centre to utilize and process the marketable surplus fruit of the local and State orchardists, being seasonal as per the availability of fruit crops. The respondent could not provide work in the off season to the contractual labour. S/Shri Surinder Kumar, Chain Singh, Vinod Kumar, Ashok Kumar, Faquir Chand, Niraj Kumar, Pawan Kumar and Smt. Kanta Devi, who all had worked with the petitioner, were engaged on muster roll basis and were senior to him. The petitioner, who had worked on hourly basis, had never completed 240 days in any calendar year. The services of the petitioner had never been disengaged at any point of time, except for temporary disengagement due to non availability of work during the lean periods or the off season of fruits and vegetables, which were being processed in the factory under the control of the respondent. For this reason in August, 2010, the whole batch of contractual labourers had been disengaged for a month. Except for the petitioner the remaining fifteen workmen had rejoined in September, 2010. The petitioner had rejoined as per the orders of this Court dated 28.6.2011. It is admitted that the petitioner had worked in different sale centres. The petitioner had never been terminated by the respondent. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 15.11.2016:

1. Whether termination of services of the petitioner by the respondent during June, 2014 is/was illegal and unjustified as alleged ? . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to ? ..*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*
4. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? . .*OPR.*

Relief:

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Chame Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of OA No. 375/1997 dated 23.4.1998 as Ex. PW1/B, copy of O.A. No.375/97 dated 23.7.1999 as Ex. PW1/C, copy of seniority list of 16 workers as Ex. PW1/D and copy of seniority list of 07 and 09 workers as Ex. PW1/E. The respondent examined one Shri Devender Pal Singh as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy seniority list as Ex. RW1/B, copy of fitness certificate as Ex. RW1/C, copy of order dated 23.4.1998 as Ex. RW1/D, copy of letter No. 4-7/2014-994 as Ex. RW1/E, copy of letter dated 3.3.2016 as Ex. RW1/F, copy of mandays chart of daily wage workers as Ex. RW1/G, copy of detail of hourly basis workers as Ex. RW1/H, copy of mandays chart of 07 workers as Ex. RW1/I, copy of detail of hourly basis workers as on May, 2014 as Ex. RW1/J and copy of office order dated 30.6.2010 as Ex. RW1/K.

7. Arguments of the learned Authorized Representative for the petitioner and Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No.1</i>	: Negative
<i>Issue No.2</i>	: Negative
<i>Issue No.3</i>	: Affirmative, in favour of the respondent
<i>Issue No.4</i>	: Not pressed
<i>Relief.</i>	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Chamel Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that only seasonal work is available with the respondent. He also denied that to encourage the people for processing pickles, juices etc.,

contractual labour was being engaged. He specifically denied that his services had also been engaged on hourly and contract basis by the respondent. It was also denied by him that the services of fifteen other persons were also engaged on contract basis by the respondent. He clearly denied that the respondent could only provide work to the contractual labour during the working season only and not throughout the year. He also denied that S/Shri Surinder, Chain Singh, Vinod Kumar, Ashok Kumar, Faquir Chand, Niraj, Pawan and Smt. Kanta Devi were engaged on muster roll. He further denied that they all were senior to him. It was also specifically denied by him that S/Shri Faquir Chand, Ashok Kumar and Niraj had never worked on contract basis. He denied that he had neither been disengaged nor given fictional breaks by the department. He denied that when the raw material is available with the respondent, work is provided to him. He admitted that nowadays he is doing the days' drudgery privately. Self stated, on the availability of the work. He clearly admitted that Ex. RX bears his signatures in red circle. He denied that he has given a phoney statement.

11. Ex. PW1/B is the copy of the order dated April 23, 1998 passed by the Hon'ble Administrative Tribunal in O.A (D) No. 375/1997 titled as Shri Faquir Chand and others Vs. The State of Himachal Pradesh through Secretary Horticulture, Shimla and others. The perusal of this order discloses that Shri Chamel Singh (petitioner) was applicant No. 4 in the Original Application. By way of the interim order dated 23.4.1998, the Hon'ble Administrative Tribunal had directed the respondents to re-engage the applicants in the same capacity in which they were working at the time of their termination.

12. Ex. PW1/C is the copy of the final order dated 23.7.1999 pronounced by the Hon'ble Administrative Tribunal in O.A. (D) No. 375/1997. It depicts that on the basis of interim order passed by the Hon'ble Administrative Tribunal the applicants were re-engaged by the respondents. The latter had stated before the Hon'ble Administrative Tribunal that they do not intend to disengage the applicants except with due process of law. On the basis of the aforesaid undertaking, the Original Application was not pressed and it stood disposed of.

13. Ex. PW1/D is the copy of seniority list cum year-wise days of engagement of the daily wagers/seasonal workers pertaining to Fruit Canning Unit, Nagrota Bagwan.

14. Ex. PW1/E is the copy of information regarding regular workers pertaining to the office of Fruit Technologist, Fruit Canning Unit, Nagrota Bagwan, District Kangra.

15. Conversely, Shri Devender Pal Singh (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 Code of Civil Procedure, he corroborated on oath the contents of reply filed by him.

In the cross-examination, he admitted that earlier also the petitioner had moved the Court *vide* reference no.76/2011, which was decided on 28.6.2013, being Ex. R-1. He also admitted that the petitioner had been working as a daily wager since 1.7.1995. He was categorical that in Ex. RW1/B, the name of the petitioner figures at serial No.3 and during the years 1996, 1999 and 2001 to 2003, he had worked for 240 days. Volunteered that, he had been kept on hourly basis and the mandays had accordingly been prepared. He clearly admitted that the mandays chart had been issued by their office. He also admitted that no appointment letter was issued at the time of engaging the petitioner. Self stated that, wage rate is mentioned alongwith Ex. R-X. He denied that the fictional breaks were given to the petitioner. Volunteered that, the work in the department is seasonal. He admitted that break is given for a few days and as the season starts, the workers are kept at work. He admitted that Shri Vinod Kumar from the year 1996 upto the year 2008 had worked for 240 days and more and since the year 2008 he has become regular. He admitted that Shri Vinod Kumar is junior to the petitioner. He admitted that the workers

mentioned in Ex. RW1/H are still working. Volunteered that, they had been kept as per the Court orders. He admitted that persons from serial no. 5 to 16 in Ex. RW1/H are junior to the petitioner. He also admitted that prior to his disengagement, the petitioner had completed 240 days as per Ex. RW1/J. He admitted that no retrenchment compensation was given to him. He denied that after the year 2014 many daily waged labourers have been engaged by the department.

16. Ex. RW1/B is the seniority list of seasonal contract workers pertaining to Fruit Canning Unit, Nagrota Bagwan up-to 30th September, 2011. It unfolds that 16 persons in all are/were working in the Fruit Canning Unit, as seasonal workers on contract basis. The name of the petitioner figures at serial No. 3 of the list.

17. Ex. RW1/C is the fitness certificate relating to Shri Vinod Kumar.

18. Ex. RW1/D is similar to Ex. PW1/B, being order dated 23.4.1998 passed by the Hon'ble Administrative Tribunal, as discussed above.

19. Ex. RW1/E is the copy of letter dated 18.3.2016 regarding appointment of seasonal and part-time basis.

20. Ex. RW1/F is the copy of letter dated 3rd March, 2016 regarding appointment of daily waged/part-time/contract/*ad-hoc* basis.

21. Ex. RW1/G is the attested copy of information regarding daily paid workers, office of the Fruit Technologist Nagrota Bagwan "Year Wise Number of Days" upto August, 2008.

22. Ex. RW1/H is the detail of hourly basis workers of the office of Fruit Technologist, Nagrota Bagwan.

23. Ex. RW1/I is the copy of information regarding regular workers pertaining to the office of Fruit Technologist, Fruit Canning Unit, Nagrota Bagwan, Distt. Kangra.

24. Ex. RW1/J is the copy of detail of hourly base basis work done by the petitioner in the office of Fruit Technologist Nagrota Bagwan, Distt. Kangra, H.P. *w.e.f.* October, 2102 to May, 2014.

25. Ex. RW1/K is the copy of office order dated 30th June, 2010 regarding regularization of Shri Shamsher Singh and five others.

26. Ex. R1 is the copy of Award dated 26.8.2013 passed in Reference No.76/2011 titled as Shri Chamel Singh Vs. The Director, Horticulture, Shimla (HP) & anr. The perusal of this Award discloses that Shri Chamel Singh was the petitioner in the reference. By way of the award, his services were held to have been engaged by the respondents as a seasonal worker only on contract basis. It was also held therein that his services were engaged by the respondents as per the availability of work from time to time and that no artificial/fictional breaks in service were provided to him by his opponents. His claim petition was accordingly held not to be maintainable and was dismissed.

27. Ex. RX is the copy of a public notice which was issued by the respondent. The petitioner had accepted the terms of employment as contained in this notice and had joined the service on 01.7.1995. The notice bears the signatures of the petitioner and the respondent. It reads as follows:—

“सर्वसाधारण को सूचित किया जाता है कि हिमाचल प्रदेश सरकार के आदेशानुसार किसी भी व्यक्ति/महिला को सीधे ही कार्य पर नहीं लगाया जा सकता तथा नैमित्तिक श्रमिक लगाने के लिये रोजगार कार्यालय के माध्यम से ही रखा जा सकता है। केन्द्र के कार्य व कार्य करने वाले इच्छुक बेरोजगार युवक/युवतियों को ध्यान में रखते हुए यह निर्णय लिया गया है कि जो युवक/युवती कार्य के अनुसार दाम अर्थात् ठेके पर कार्य करना चाहें वह अपनी सहमति देकर केन्द्र को आवश्यकतानुसार कार्य कर सकता है। ऐसे कार्य (ठेका) के लिये विभिन्न कार्यों की दरें इस सूचना के साथ पीछे पृष्ठ पर अंकित हैं। इस प्रकार प्रत्येक कार्यकर्ता को उसकी कार्य क्षमता के अनुसार ही राशि अदा की जायेगी न कि निर्धारित दिहाड़ी। यह भी स्पष्ट किया जाता है कि ठेके पर कार्य करने वाले मजदूरों को रविवार तथा अन्य राजपत्रित अवकाश देय नहीं है।

सहायक फल प्रौद्योग नगरोंटा बगवॉ, जिला कांगड़ा

मुझे उपरोक्त शर्तें मन्जूर हैं और मैं इन शर्तों के अनुसार ही फल विधायन केन्द्र हटवास में जब तक विधायन केन्द्र में कार्य होगा, करूंगा। मुझे दूसरे नैमित्तिक श्रमिकों से जो कि बहुत लम्बे समय से केन्द्र में लगे हैं, उनसे कुछ भी लेना देना नहीं होगा।

हस्ता. चमेल सिंह

सहमती वाले के हस्ताक्षर व पूरा पता

चमेल सिंह पुत्र श्री चरण सिंह

ग्रा0 व डा0 हटवास

उत्पादन प्रभारी

स0 फ0 प्रौ0 महोदय के

अनुसार प्रार्थी को 1-7-95 से

1-7-95 ठेके में कार्य पर रखा गया”।

28. After a close scrutiny of the record, it reveals that the parties are not at variance that the services of the petitioner had initially been engaged on 1st July, 1995 in the Fruit Canning Unit, Nagrota Bagwan.

29. As per the petitioner, he was engaged as a daily wagger on muster roll basis by the respondent/department from the date of his initial engagement uptil May, 2014. Artificial/fictional breaks in service were provided to him by his adversary wrongly and illegally so that he could not complete 240 days of work for the regularization of his services as per the policies of the Government. It was also claimed that his termination in June, 2014 by the respondent was illegal and unjustified and against the provisions of the Act.

30. Per contra, the respondent claimed that the petitioner had been engaged on hourly contract basis to perform various duties, as per the availability of the work. He and fifteen other workers, whose names figure in the seniority list, copy of which is Ex. RW1/B, were engaged on contract basis from time to time for carrying out seasonal works in the Fruit Canning Unit at Nagrota Bagwan. It was also the case of the respondent that all the seasonal contractual workers had been paid the wages at the rates mentioned in the rate list annexed with the notice, copy of which is Ex. RX. Since, the petitioner was a seasonal worker, his disengagement, if any, from service on the cessation of work will not amount to retrenchment as envisaged under Section-2 (oo) (bb) of the Act.

31. In the case on hand, except for the self serving and oral testimony of the petitioner, there is no document on record to show that his services were engaged as a daily waged beldar on muster roll basis by the respondent. The issuance of public notice has not been disputed by the petitioner. Rather, he admitted that the notice Ex. RX bears his signatures in red circle. The contents of the notice (Ex. RX) have already been referred to in the preceding paragraphs of the Award. In the light of this notice and in the absence of any document having been placed and exhibited on record by the petitioner evidencing that his services were engaged on daily wage basis on muster roll, his plea that he had been engaged by the respondent as a daily waged

beldar on muster roll basis is not tenable, rather it appears that he had been employed as a seasonal worker on contract basis.

32. A perusal of the seniority list pertaining to seasonal contract workers of Fruit Canning Unit, Nagrota Bagwan, discloses that the petitioner had worked for more than 240 days in a calendar year under the respondent. But, however, there is not an *iota* of evidence led on record by the petitioner to show that any of the seasonal worker had been regularized by the respondent. Much was harped about the case of one Shri Vinod Kumar by the petitioner and by referring to the cross-examination of Shri Devender Pal Singh (RW1), it was urged that he was junior to the petitioner and had become regular. However, a perusal the document Ex. RW1/G, being the seniority list of daily paid labourers working in Fruit Canning Unit, Nagrota Bagwan, would clarify that the services of said Shri Vinod Kumar had been engaged as a daily paid labourer on muster basis by the respondent.

33. In cases titled as *Morinda Co-op. Sugar Mills Ltd. vs. Ram Kishan and Ors.*, AIR 1996 SC 332 and *Batala Coop. Sugar Mills Ltd. vs. Sowaran Singh*, AIR 2006 SC 56, it has been laid down by the Hon'ble Supreme Court that the disengagement of the services of a seasonal worker on cessation of work/closure of the season will not amount to retrenchment, even if he had worked for more than 240 days in a year as per Clause (bb) of Section 2(o) of the Act.

34. There is no denial of the fact that Reference No.76/2011 titled as Shri Chamel Singh Vs. The Director, Horticulture, H.P., Shimla & Anr. was decided by this Court on 26.8.2013. It's copy is placed on record as Ex. R1. While deciding the said reference, it was held by this Court that the services of the petitioner had been engaged by the respondents as a seasonal worker only on contract basis. The services of the petitioner were engaged by the respondents as per the availability of work from time to time. No artificial/fictional breaks in service were ever provided to the petitioner by his opponents. The claim petition is not maintainable. Needless to say that such findings have attained finality, as the petitioner has not placed/exhibited on the file any document evidencing that such findings have been set aside by a competent Court of law.

35. In view of the aforesaid binding precedents and also the ocular and documentary evidence available on record, in my humble opinion, the services of the petitioner were engaged by the respondent only as a seasonal worker on contract basis. His services were being engaged by the respondent as per the availability of work from time to time, as only seasonal work was available in the Fruit Canning Unit, Nagrota Bagwan. The disengagement of the services of the petitioner, a seasonal worker, on cessation of work/closure of the season would not amount to retrenchment, particularly when it is claimed by the respondent that the services of the petitioner had never been terminated by him. The petitioner could not claim parity with Shri Vinod Kumar and others, whose names figure in the seniority list Ex. RW1/G, as from the very beginning the services of said Shri Vinod Kumar and others had been engaged by the respondent as daily wagers on muster roll basis. It is well settled that the principle of parity is only applicable amongst the equals. At the risk of repetition, there is nothing on record to establish that the services of fifteen other seasonal contract workers or any of them, who had been working with the petitioner, have/has been regularized. The working pattern of the petitioner and other seasonal contract workers was the same, as is evident from the seniority list Ex. RW1/B.

36. Such being the situation, I have no hesitation to conclude that the petitioner is not entitled to any relief, as claimed for by him.

37. Issues No.1 and 2 are decided in the negative and against the petitioner, while issue no.3 is decided in the affirmative and in favour of the respondent.

38. Not pressed.

Relief

39. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 262/2014
Date of Institution : 14-8-2014
Date of Decision : 03-5-2019

Shri Roop Singh s/o Shri Jarbu Ram, r/o Village Kapryas, P.O. Jassal, Tehsil Karsog, District Mandi, H.P. ..*Petitioner.*

Versus

The Divisional Forest Officer, Forest Division Karsog, District Mandi, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gurdev Singh, Adv.
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Roop Singh s/o Shri Jarbu Ram, r/o Village Kapryas, P.O. Jassal, Tehsil Karsog, District Mandi, H.P. by the Divisional Forest Officer, Forest Division, Karsog, District Mandi, H.P. during year, 2008 to 2012 and finally terminated *w.e.f.* 31.12.2012 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar by the respondent *w.e.f.* 1.1.2004 in Forest Range Pangna under Forest Division Karsog. Thereafter he worked with full sincerity, honesty, devotion and satisfaction of the respondent. The petitioner had continuously discharged his duties *w.e.f.* 1.1.2004 and had completed more than 240 days in each calendar year, but on 31.12.2012 the respondent had terminated his services without considering his long spell of service which was gross violation of the provisions of Sections 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner had been discriminated, whereas a number of other junior persons, namely, Shri Jagdish etc., were allowed to continue and are still working with the respondent. The petitioner had made many requests for his re-engagement, but without success. An industrial dispute was then raised by the petitioner before the Labour-cum-Conciliation Officer, Mandi. When conciliation failed before the Labour Officer-cum-Conciliation Officer, a failure report was sent to the Labour Commissioner, who after examining the report had referred the matter to the Court for adjudication. While terminating the services of the petitioner, no notice had been served upon the petitioner by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection regarding lack of maintainability as no legal and fundamental right of the petitioner had been violated by the respondent, was taken.

On merits, it was asserted that the petitioner was engaged as a casual daily waged labourer in the month of January, 2005 in Pangna Range of Karsog Forest Division. He had only worked for 26 days in the year 2005. It is denied that he was engaged *w.e.f.* 1.1.2004. He had never completed 240 days in any calendar year. It was denied that the services of the petitioner had been terminated by the respondent/department. He was an intermittent work and had been coming to work at his own convenience. It was denied that a junior to the petitioner named Shri Jagdish was allowed to continue in service and as such he had been given benefits of seniority, continuity and regularization etc. It was further denied that fresh persons had been engaged by the respondent. No intermittent breaks had ever been given to the petitioner. It was asserted that the petitioner was engaged on bill voucher basis as per the directions of the Government of H.P. *vide* letter No. FFE-B-C(1)-35/2009 dated 28.4.2009. The respondent had not violated any of the provisions of the Act. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 15.9.2015:

1. Whether time to time termination of services of the petitioner by the respondent during the year 2008 to 2012 is/was improper and unjustified as alleged? ..*OPP*
2. Whether final termination of services of petitioner *w.e.f.* 31.12.2012 is/was improper and unjustified? ..*OPP*.
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? .. *OPR*.

Relief .

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Roop Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of mandays chart as Ex. PW1/B and copies of bills as Ex.PW1/C, Ex.PW1/D and Ex.PW1/E respectively. The respondent examined one Shri Raj Kumar Sharma as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart as Ex. RW1/B and copy of notification dated 28.4.2009 as Ex.RW1/C.

7. Arguments of the learned counsel for the petitioner and learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No.1</i>	: Negative
<i>Issue No. 2</i>	: Negative
<i>Issue No. 3</i>	: Negative
<i>Issue No. 4</i>	: Not pressed
<i>Relief.</i>	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. : 1 To 3

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Roop Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had worked as a labourer in January, 2005 in Pangna Range. He also denied that he had not worked with the department in the years 2006 and 2007. Further, he denied that he had worked intermittently for the period from the year 2008 uptil the year 2011 with the department. It was also denied by him that no junior to him had been kept at work. He specifically denied that he had neither been removed from work, nor any fictional breaks were given to him by the respondent and that he had instituted a phoney petition.

11. Ex. PW1/B is the copy of mandays chart relating to the petitioner.

12. Ex. PW1/C to Ex. PW1/E are the copies of bills pertaining to the petitioner.

13. Conversely, Shri Raj Kumar Sharma, Divisional Forest Officer, Karsog District Mandi, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of reply filed by him.

In the cross-examination, he admitted that the petitioner had also worked on bill basis with the department. He admitted that in this regard Ex.PW1/C to Ex. PW1/E had been issued. He denied that to defeat his (petitioner's) right, he was kept on bill basis and muster rolls in

between. He also denied that person junior to the petitioner kept on serving the department continuously and that new/fresh hands were also engaged. He admitted that for his alleged willful absence, no notice has been issued to the petitioner. He categorically denied that they had retrenched the petitioner orally. Volunteered that, he himself had abandoned the work.

14. Ex. RW1/B is the copy of mandays chart relating to the petitioner. It corresponds to Ex.PW1/B.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/B (also Ex. PW1/B), it can be gathered that the petitioner was initially appointed in the month of January, 2005. Although, the petitioner claimed that his services were engaged as a daily waged beldar by the respondent on 1.1.2004, but he has not placed or exhibited on record any document in this regard.

16. Learned Authorized Representative for the petitioner argued that the work for 240 days in a year was not provided to his client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service.

17. On the other hand, the learned Deputy District Attorney urged that work for 240 days or more in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time.

18. To my mind, the contention of the learned Deputy District Attorney for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

19. Section 25-B of the Act postulates as under:

“25B. Definition of continuous service- For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case;*
 - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*

- (i) *ninety-five days, in the case of a workman employed below ground in a mine; and*
- (ii) *one hundred and twenty days, in any other case.*

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

- (i) *he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;*
- (ii) *he has been on leave with full wages, earned in the previous years;*
- (iii) *he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*
- (iv) *in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.*

20. The above quoted section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of twelve calendar months to the workman for the purpose of continuous service. Meaning thereby that the employer can regulate the working of an employee as per his need, but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of twelve calendar months to the employee/petitioner. It has been laid down by the Hon'ble Supreme Court in case titled as ***Digwadih Colliery vs. Workmen, AIR 1966 SC 75***, that “service for 240 days in a period of twelve calendar months is equal not only to the service for a year, but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of twelve calendar months into a continuous service for one complete year.

21. Be it recorded here that in computing the continuous service, notional breaks of service cannot be ignored. Now, the question which comes into play is whether artificial breaks were provided to the petitioner by the respondent, as mentioned in the reference or not?

22. To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/B unfolds that the services of the petitioner were initially engaged in the month of January, 2005. From that month to the month of December, 2012 (as is evident from Ex.PW1/B), the petitioner was provided the work for more than 240 days in a calendar year by the respondent but, however, he had worked for less than 240 days and had remained absent from the duties. He cannot be allowed to take advantage of his own wrongs. If intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of payments for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the year 2008 to 2012. The industrial dispute was raised by the petitioner after about two years. The fact that the petitioner remained tight lipped and complacent about his rights for such a period as well as received the payments without any protest speaks volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is noxious of his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his rescue taking into consideration the facts narrated above.

23. Such being the situation, I have no hesitation to conclude that no artificial/fictional breaks were provided to the petitioner by the respondent. He is not entitled to such relief.

24. Then, from the mandays chart Ex. RW1/B, it becomes clear that the petitioner had not completed 240 days of service in twelve calendar months preceding his date of retrenchment, which as per the reference took place 31.12.2012. Therefore, it cannot be said that he was in “continuous service for not less than one year” under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

25. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. One of such persons has been named in para 2 of the statement of claim as Shri Jagdish. Shri Roop Singh (PW1) also named such person to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondent refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondent after his alleged termination. Significantly, no seniority list of daily waged beldars has been placed and exhibited on record by the petitioner. Even no mandays chart/muster rolls of any junior worker, and in particular Shri Jagdish, has been brought on the file to show that after his (petitioner's) termination, any junior was still in service with the respondent. No doubt, in his substantive evidence the petitioner maintained that persons junior to him were still in service, but his solitary version cannot be taken as a gospel truth in this regard, because such claim has been denied by the respondent being wrong. No other person was examined as a witness by the petitioner in support of his case to show that persons junior to him were still serving the department. That being so, the provisions of Section 25-G of the Act are not attracted in this case.

26. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression ‘employment’ signifies a fresh employment to fill the vacancies, whereas the expression ‘regularization of the service’ signifies that the employee, who is already in service, his services are regularized as per service regulations.

27. Such being the situation, I have no hesitation to conclude that the respondent has also not contravened the provisions of Section 25-H of the Act, as claimed.

28. The petitioner's allegation that the respondent had also violated the provisions of Section 25-N of the Act as well, to my mind, does not appear to have been substantiated for want of plausible evidence.

29. These issues are accordingly decided in the negative and against the petitioner.

Issue No .4:

30. Not pressed.

Relief

31. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 462/2015
Date of Institution : 29.10.2015
Date of Decision : 03.5.2019

Shri Chet Ram s/o Shri Dharam Dass, r/o Village Khanyog, P.O. Seri Kothi, Tehsil Sunder Nagar, District Mandi, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S. S. Sippy, AR
For the Respondent(s) : Sh. S. S. Kaundal, Dy. D. A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Sh. Chet Ram S/O Sh. Dharam Dass, r/o Village Khanyog, P.O. Seri Kothi, Tehsil Sunder Nagar, Distt. Mandi, H.P. by The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P. during 1998 to April, 2011 and finally during May, 2011 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified? If not, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged forest worker by the respondent w.e.f. 18.12.1998

and thereafter he worked continuously upto 31.5.2011. He had worked for 12 days, 52 days, 187 days, 348 days, 198 days, 83 days, 72 days, 32 days, 47 days, 33 days, 36 days, 19 days and for 17 during the period from the years 1998 to 2011 respectively. He had worked during the aforesaid period and had got the salary, but he was given work only for one month in the year 2015. His name is reflected in the seniority at serial no. 355 and accordingly, 31 junior workers are still in service of the department. He was not given seniority which was unfair labour practice of the industrial disputes. A number of juniors, as detailed in para 2 of the petition, were retained by the respondent. He is unemployed. The action of the respondent is stated to be in violation of the provisions of Sections 25-B, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches, have been taken.

On merits, it was asserted that the services of the petitioner had initially been engaged by the respondent in the month of June, 2001 to carry out the seasonal forestry work as such he had worked intermittently upto May, 2002 with the respondent. Thereafter, he had not come to work. He had left the job of his own sweet will. As and when the petitioner had approached for work, his services were utilized by the respondent. It is denied that he had been engaged on 18.12.1998. No junior to him had ever been engaged by the respondent. No fictional breaks had also been given to him by the respondent/department. He had never continuously worked for 240 days in any calendar year and as such there was no violation of any of the provisions of Section 25-F of the Act. It was emphatically denied that the services of the petitioner had been terminated/retrrenched by the respondent/department. The respondent had followed the principle of 'last come first go'. The petitioner is gainfully employed, being an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 30.3.2016:

1. Whether time to time termination of the services of petitioner during 1998 to April, 2011 by the respondent is illegal and unjustified as alleged? . . .*OPP.*
2. Whether final termination of services of the petitioner by the respondent during May, 2011 is illegal and unjustified as alleged? . . .*OPP.*
3. If issue No.1 & issue no.2 or both are proved in affirmative, to what relief petitioner is entitled to? . . .*OPP.*
4. Whether the present claim petition/reference is not maintainable in the present form as alleged? . . .*OPR.*
5. Whether the claim petition is bad on account of delay and laches on part of claimant as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Chet Ram appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 15.9.2003 as Ex. PW1/B and copy of seniority list as Ex. PW1/C. The respondent examined one Shri Suneet Bhardwaj as RW1, who tendered his statement by way of affidavit as Ex. RW1/A and copy of mandays chart of the petitioner as Ex. RW1/B.

7. Arguments of the learned Authorized Representative for the petitioner and Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: Negative
<i>Issue No. 2</i>	: Negative
<i>Issue No. 3</i>	: Negative
<i>Issue No. 4</i>	: Not pressed
<i>Issue No. 5</i>	: No
<i>Relief</i>	: Petition is dismissed per operative part of the Award.

Issues No.1 To 3

REASONS FOR FINDINGS

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Chet Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that there is seasonal work in the department. He was engaged as a daily wager in December, 1998. He denied that he had never worked with the respondent in December, 1998. He specifically denied that he was engaged as a daily wager in June, 2001. He further denied that he had worked intermittently upto May, 2002 with the department. It was also denied by him that neither any breaks, nor he had been removed from work by the department. He categorically denied that he himself had abandoned the work. He also denied that only those workers were regularized, who had continuously worked with the department. It was also denied by him that no junior had been kept at work. He owns lands, which he cultivates. He denied that he is making a phoney statement.

11. Ex. PW1/B is the copy of conciliation proceedings dated 15.9.2003 issued by Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.

12. Ex. PW1/C is the copy of seniority list of daily wagers of Suket Forest Division, Sunder Nagar, as it stood on 31.3.2003.

13. Conversely, Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by him.

In the cross-examination, he denied that the petitioner had continuously worked from the year 1997 upto the year 2010. Mandays chart Ex. RW1/B has been issued by their office. He specifically denied that a correct detail of the working days of the petitioner has not been given. He further denied that the petitioner was removed from work from time to time from the year 2001 upto the year 2010. Volunteered that, he had been coming to work as per his own convenience. No notice in this regard was issued to him by the department. He admitted that the name of the petitioner figures in the seniority list. He was not aware that the workers mentioned in para 3 were junior to the petitioner. Self stated that, he could only tell it after seeing the record. He admitted that the department had adhered to the principle of 'last come first go'. He denied that he has wrongly deposed in favour of the department.

14. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/B, it can be gathered that the petitioner was initially appointed in the month of June, 2001. Although, the petitioner disputed this mandays chart and claimed that his services were engaged as a daily waged beldar by the respondent on 18.12.1998 and that he had worked as such upto 31.5.2011, but he has not placed or exhibited on record any document in this regard.

16. Learned Authorized Representative for the petitioner argued that the work for 240 days in a year was not provided to his client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service.

17. On the other hand, the learned Deputy District Attorney urged that the petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time.

18. To my mind, the contention of the learned Deputy District Attorney for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

19. Section 25-B of the Act postulates as under:

"25B. Definition of continuous service- For the purposes of this Chapter,—

- (3) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (4) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (b) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(ii) *two hundred and forty days, in any other case;*

(b) *for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*

(i) *ninety-five days, in the case of a workman employed below ground in a mine; and*

(ii) *one hundred and twenty days, in any other case.*

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(iv) *he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;*

(v) *he has been on leave with full wages, earned in the previous years;*

(iv) *he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*

(iv) *in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.*

20. The above quoted section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of twelve calendar months to the workman for the purpose of continuous service. Meaning thereby that the employer can regulate the working of an employee as per his need, but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of twelve calendar months to the employee/petitioner. It has been laid down by the Hon'ble Supreme Court in case titled as ***Digwadih Colliery vs. Workmen, AIR 1966 SC 75***, that “service for 240 days in a period of twelve calendar months is equal not only to the service for a year, but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of twelve calendar months into a continuous service for one complete year.

21. Be it recorded here that in computing the continuous service, notional breaks of service cannot be ignored. Now, the question which comes into play is whether artificial breaks were provided to the petitioner by the respondent, as mentioned in the reference or not?

22. To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/B unfolds that the services of the petitioner were initially engaged in the month of June, 2001. From that month to the month of May, 2002, the petitioner was provided the work for more than 240 days in a calendar year by the respondent but, however, he had worked for less than 240 days and had remained absent from the duties. He cannot be allowed to take advantage of his own wrongs. If intentional breaks were given to him then, why he did not agitate the said fact earlier or at the time of the receipt of payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the year 1998 to 2011. The industrial dispute was raised by the petitioner after more than four years.

The fact that the petitioner remained tight lipped and complacent about his rights for a long period as well as received the payments without any protest speaks volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous of his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his rescue taking into consideration the facts narrated above.

23. Such being the situation, I have no hesitation to conclude that no artificial/fictional breaks were provided to the petitioner by the respondent. He is not entitled to such relief.

24. Then, from the mandays chart Ex. RW1/B, it becomes clear that the petitioner had not completed 240 days of service in twelve calendar months preceding his month and year of retrenchment, which as per the reference took place during May, 2011. Therefore, it cannot be said that he was in "continuous service for not less than one year" under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

25. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 2 of the statement of claim. Shri Chet Ram (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondent refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondent after his alleged termination. Significantly, seniority list has itself been placed and exhibited on record by the petitioner as Ex. PW1/B. The name of the petitioner figures at serial No.355 of the list. No doubt, on perusal of this document, it reveals that persons mentioned from serial Nos. 356 to 386, were junior to the petitioner, as they are shown to have been engaged after him. But, however, this seniority list only shows the seniority of daily wagers of Suket Forest Division, Sunder Nagar, as it stood on 31.3.2003. The alleged termination of the petitioner, as stated above, had taken place in the month of May, 2011. No seniority list of daily wagers for the year 2011 or thereafter has been placed and exhibited on record by the petitioner. Even no mandays chart/muster roll of any junior worker has been brought on the file to show that after his (petitioner's) termination, he (junior) was still in service with the respondent. Though, in his substantive evidence the petitioner maintained that persons junior to him were still in service, but his solitary version cannot be taken as a gospel truth in this behalf, because such a claim has been denied by the respondent being wrong. No other person was examined as a witness by the petitioner in support of his case to show that persons junior to him were still serving the department. That apart, it was specifically suggested to the respondent (RW1) by the petitioner that the department had adhered to the principle of 'last come first go'. He admitted the suggestion. Admission of this suggestion of the petitioner by the respondent leaves no doubt in mind that the respondent admitted that no junior at the cost of the senior had been retained by the respondent. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

26. That being the position, it can safely be concluded that the petitioner has not been able to establish on record that his alleged termination was illegal and unjustified on the part of the respondent, as claimed.

27. These issues are accordingly decided in the negative and against the petitioner.

Issue No.4:

28. Not pressed.

29. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

30. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in the negative and against the respondent.

Relief:

31. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of May, 2019.

Sd/-
(YOGESH JASWAL)
*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 291/2015
Date of Institution : 13.7.2015
Date of Decision : 04.5.2019

Shri Jagdish Kumar s/o Shri Tula Ram, r/o Village Shalag, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Jagdish Kumar s/o Shri Tula Ram, r/o Village Shalag, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during June, 2001 to July, 2010 and finally during August, 2010, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged forest worker by the respondent *w.e.f.* 1.7.1997 and thereafter he had worked continuously upto August, 2010. His services were orally dispensed with by the respondent in the month of August, 2010. Fictional breaks were given to him time and again by the respondent from the year 2001 upto the year 2010. A number of juniors, as detailed in para 3 of the petition, were retained by the respondent. Even new/fresh hands were engaged by the respondent after the retrenchment of the petitioner. No opportunity of re-engagement was ever given to the petitioner. The action of the respondent is stated to be in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection regarding lack of maintainability, as no legal and fundamental right of the petitioner had been infringed by the respondent, has been taken.

On merits, it was asserted that the services of the petitioner had initially been engaged by the respondent in the month of June, 2001 to carryout the seasonal forestry work as such he had worked intermittently upto August, 2010 with the respondent. His services were never dispensed with by the respondent. It was specifically denied that the petitioner had been engaged on 1.1.2000 and had continuously worked with the department. No fictional breaks had also been given to him by the respondent/department. He had never continuously worked for 240 days in any calendar year and as such there was no violation of any provisions of Section 25-F of the Act. It was emphatically denied that juniors had been engaged by the respondent. Only those workers have been regularized by the department, who had fulfilled the requisite criteria for regularization as per the policy of the government. Work was provided to the petitioner, as and when he had approached the department. The respondent had followed the principle of ‘last come first go’. The petitioner is gainfully employed, being an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 30.3.2016:

1. Whether time to time termination of the services of petitioner during June, 2001 to July, 2010 by the respondent is illegal and unjustified as alleged? . . . *OPP.*
2. Whether final termination of services of the petitioner by the respondent during August, 2010 is illegal and unjustified as alleged? . . . *OPP.*

3. If issue No.1 & issue no.2 or both are proved in affirmative, to what relief petitioner is entitled to? . . .*OPP.*
4. Whether the present claim petition/reference is not maintainable in the present form as alleged? . . .*OPR.*
5. Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Jagdish Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 15.9.2003 as Ex. PW1/B and copy of seniority list as Ex. PW1/C. The respondent examined one Shri Suneet Bhardwaj as RW1, who tendered his statement by way of affidavit as Ex. RW1/A and copy of mandays chart of the petitioner as Ex. RW1/B.

7. Arguments of the learned Authorized Representative for the petitioner and learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No.1</i>	: Negative
<i>Issue No. 2</i>	: Negative
<i>Issue No. 3</i>	: Negative
<i>Issue No. 4</i>	: Not pressed
<i>Relief</i>	: Petition is dismissed per operative part of the Award.

Issues No. 1 to 3:

REASONS FOR FINDINGS

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Jagdish Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that there is seasonal work in the department. He denied that he had never been kept at work in the year 1997. He also denied that he had worked with the respondent intermittently from June, 2001 upto the year 2010. Further, he denied that he had not worked from the year 2003 upto the year 2007. It was also denied by him that neither any breaks had been given, nor he had been removed from work by the department. He categorically denied that he himself had abandoned the work. He specifically denied that he had never worked for 240 days or more in any year. It was also denied by him that no junior had been kept at work. He owns lands, which he cultivates. He also does the days' drudgery privately. He denied that he is making a phoney statement.

11. Ex. PW1/B is the copy of conciliation proceedings dated 15.9.2003 issued by Divisional Forest Officer, Suket Forest Division, Sundar Nagar, District Mandi, H.P.

12. Ex. PW1/C is the copy of seniority list of daily wagers of Suket Forest Division, Sunder Nagar, as it stood on 31.3.2003.

13. Conversely, Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by him.

In the cross-examination, he denied that the petitioner had continuously worked from the year 1997 upto the year 2010. Mandays chart Ex. RW1/B has been issued by their office. He specifically denied that a correct detail of the working days of the petitioner had not been given. He further denied that the petitioner was removed from the work from time to time from the year 2001 upto the year 2010. Volunteered that, he had been coming to work as per his own convenience. No notice in this regard was issued to him by the department. He denied that the name of the petitioner figures in the seniority list. He was not aware that the workers mentioned in para 3 were junior to the petitioner. Self stated that, he could only tell it after seeing the record. He admitted that the department had adhered to the principle of 'last come first go'. He denied that he has wrongly deposed in favour of the department.

14. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/B, it can be gathered that the petitioner was initially appointed in the month of June, 2001. Although, the petitioner disputed this mandays chart and claimed that his services were engaged as a daily waged beldar by the respondent on 1.7.1997 and that he had worked as such upto August, 2010, but he has not placed or exhibited on record any document in this regard.

16. Learned Authorized Representative for the petitioner argued that the work for 240 days in a year was not provided to his client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service.

17. On the other hand, the learned Deputy District Attorney urged that the work for 240 days or more in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional breaks were provided to the petitioner at any point of time.

18. To my mind, the contention of the learned Deputy District Attorney for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

19. Section 25-B of the Act postulates as under:

"25B. Definition of continuous service- For the purposes of this Chapter,—

- (5) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (6) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*

- (c) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
- (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case;*
- (b) *for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
- (i) *ninety-five days, in the case of a workman employed below ground in a mine; and*
 - (ii) *one hundred and twenty days, in any other case.*

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

- (vii) *he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;*
- (viii) *he has been on leave with full wages, earned in the previous years;*
- (ix) *he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*
- (iv) *in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.*

20. The above quoted section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of twelve calendar months to the workman for the purpose of continuous service. Meaning thereby that the employer can regulate the working of an employee as per his need, but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of twelve calendar months to the employee/petitioner. It has been laid down by the Hon'ble Supreme Court in case titled as **Digwadih Colliery vs. Workmen, AIR 1966 SC 75**, that “service for 240 days in a period of twelve calendar months is equal not only to the service for a year, but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of twelve calendar months into a continuous service for one complete year.

21. Be it recorded here that in computing the continuous service, notional breaks of service cannot be ignored. Now, the question which comes into play is whether artificial breaks were provided to the petitioner by the respondent, as mentioned in the reference or not?

22. To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/B unfolds that the services of the petitioner were initially engaged in the month of June, 2001. From that month to the month of March, 2010, the petitioner was provided the work for more than 240 days in a calendar year by the respondent but, however, he had worked for less than 240 days and had remained absent from his duties. Ex. RW1/B also highlights that the petitioner did not work for the days for which the muster rolls were issued in his

name by the respondent. Some times he worked for less than 20 days despite the fact that the muster roll for the entire month was issued in his favour. Then, it is also apparent from the mandays chart that from January, 2003 upto December, 2007, the petitioner had not worked even for a single day and it appears that during this period he had absented himself from his duties. He cannot be allowed to take advantage of his own wrongs. If intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of payments for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the year 2001 to 2010. The industrial dispute was raised by the petitioner after more than five years. The fact that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payments without any protest speaks volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is noxious of his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his rescue taking into consideration the facts narrated above.

23. Such being the situation, I have no hesitation to conclude that no artificial/fictional breaks were provided to the petitioner by the respondent. He is not entitled to such relief.

24. Then, from the mandays chart Ex. RW1/B, it becomes clear that the petitioner had not completed 240 days of service in twelve calendar months preceding his month and year of retrenchment, which as per the reference took place during August, 2010. Therefore, it cannot be said that he was in "continuous service for not less than one year" under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

25. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 3 of the statement of claim. Shri Jagdish Kumar (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondent refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondent after his alleged termination. Significantly, seniority list has itself been placed and exhibited on record by the petitioner as Ex. PW1/B. His name nowhere figures in it. However, as discussed above, it is an admitted fact of the parties that the services of the petitioner had been engaged as a daily wager and as per the mandays chart Ex. RW1/B, his initial month of appointment is June, 2001. From the perusal of the seniority list, it is apparent that persons mentioned from serial nos. 365 to 386, were junior to the petitioner, as they are shown to have been engaged after him. But, however, the seniority list only shows the seniority of daily wagers of Suket Forest Division, Sundar Nagar, as it stood on 31.3.2003. The alleged termination of the petitioner, as stated above, had taken place in the month of August, 2010. No seniority list of daily wagers for the year 2010 or thereafter has been placed and exhibited on record by the petitioner. Even no mandays chart/muster roll of any junior worker has been brought on the file to show that after his (petitioner's) termination, he (junior) was still in service with the respondent. Though, in his substantive evidence the petitioner maintained that persons junior to him were still in service, but his solitary version cannot be taken as a gospel truth in this behalf, because such a claim has been denied by the respondent being wrong. No other person was examined as a witness by the petitioner in support of his case to show that persons junior to him were still serving the department. That apart, it was specifically suggested to the respondent (RW1) by the petitioner that department had adhered to the principle of 'last come first go'. He admitted the suggestion. Admission of this suggestion of the petitioner by the respondent leaves no doubt in mind that the petitioner admitted that no junior at the cost of the

senior had been retained by the respondent. That being so, the provisions of Section 25-G of the Act are also not attracted in this case.

26. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of an employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

27. Such being the situation, I have no hesitation to conclude that the respondent has also not contravened the provisions of Section 25-H of the Act, as claimed.

28. These issues are accordingly decided in the negative and against the petitioner.

Issue No.4:

29. Not pressed.

Relief:

30. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 751/2016
Date of Institution : 18.11.2016
Date of Decision : 04.05.2019

Shri Dhanwant Kumar s/o Shri Kanshi Ram, r/o Village and P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. . . *Petitioner*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . . *Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Dhanwant Kumar, s/o Shri Kanshi Ram, r/o Village and P. O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. during 08/2009 by the Divisional Forest Officer Suket Forest Division Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated nil received in the Office of Labour Office Mandi on 25/11/2014 after more than 5 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 15, 28, and 28 days during years 2000, 2002 and 2009 respectively and delay of more than 5 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex- worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged as a daily waged beldar by the respondent on 1.1.1998 under Jhungi Range and had worked uninterruptedly till the year 2009. His services were thereafter terminated illegally by the respondent, despite his having performed his duties diligently. After his termination, persons junior to him were retained and the principle of ‘first come last go’ was violated by the respondent. It has come to the notice of the petitioner that persons, namely, S/Shri Het Ram, Dalip Kumar and Asha Ram etc. were re-engaged by the department and were thereafter regularized. A demand notice was raised by the petitioner before the Labour-cum-Conciliation Officer, Mandi. It was responded to by the respondent, but the reply was false. Wrong working days had been shown in the mandays chart. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability as no legal and fundamental right of the petitioner had been infringed by the respondent and that the petition was bad on account of delay and laches, have been taken.

On merits, it is asserted that daily wagers are engaged depending upon the availability of work and funds. Seniority is being maintained by the department to engage the daily wagers. The petitioner had worked with the respondent for seasonal forestry works. The petitioner has represented himself before the Incharge Balag Beat in Jhungi Forest Range during the month of June, 2000 and had worked with the respondent intermittently upto August, 2009. Thereafter, he had never come forward, when works and funds were available with the department. The services of the petitioner had never been terminated by the department. It was specifically denied that the petitioner had been engaged in the year 1998. The petitioner had been coming to work as per his own convenience. He had not worked even for a single day in the year 2001 and for the period from the year 2003 upto the year 2008. No juniors were engaged by the respondent. The petitioner had not completed 240 days in any calendar year. It was specifically denied that the petitioner had approached the department for work. Only those workers were regularized who had completed the requisite criteria for regularization, as per the government policy. Workers, namely, S/Sh. Het Ram, Dalip Kumar and Asha Ram are senior to the petitioner. The demand notice had been raised after about 12 years, without explaining the delay. The petitioner is gainfully employed, being an agriculturist.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 20.12.2017:

1. Whether termination of the services of petitioner by the respondent during August, 2009 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR*.

Relief :

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Dhanwant Kumar examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of information under RTI dated 3.8.2017 as Ex. PW1/B, copy of notification dated 8.7.2013 as Ex. PW1/C and copy of regularization list dated 7.5.2015 as Ex. PW1/D. The respondents examined one Shri Suneet Bhardwaj as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of mandays chart as Ex. RW1/B.

7. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Affirmative

<i>Issue No. 2</i>	: Affirmative
<i>Issue No. 3</i>	: Negative
<i>Issue No. 4</i>	: Not pressed
<i>Relief</i>	: Petition is partly allowed awarding lump sum compensation of ₹ 15,000/- per operative part of the award.

Issue No.1, 2 and 4:

REASONS FOR FINDINGS

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Dhanwant Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he was engaged as a daily waged labourer in the year 2002. Volunteered that, he had worked from the year 1998 upto the year 2009. He specifically denied that from the year 1998 upto 20.6.2000, he had not worked with the department. He also denied that from 21.6.2000 upto 20.3.2002, he had worked intermittently with the department. Further, he denied that only in August, 2009 he had worked with the respondent on bill basis. He admitted that he had not given in writing to the department for being re-engaged from the year 2009 upto November, 2014. Self stated that he had been going to the department for seeking work. He clearly admitted that the demand notice had been raised by him in November, 2014. He denied that neither he was given any break, nor removed from service by the department. He further denied that he himself had abandoned the work after August, 2009. It was also denied by him that he had not completed 240 days or more and that S/Shri Het Ram, Dalip Kumar and Asha Ram were senior to him. He owns land, which he cultivates. He clearly denied that no junior had been kept at work by the department and that he had given a phoney statement.

11. Ex. PW1/B is the copy of letter dated 3.8.2017 regarding information under RTI Act, 2005.

12. Ex. PW1/C is the copy of letter dated 8th July, 2013 regarding regularization of daily waged workers/contingent paid workers.

13. Ex. PW1/D is the copy of regularization policy notified *vide* letter no.PER(AP)- C-B(2)-1/2014 dated 7th May, 2015 (seven years continuous service with required minimum mandays).

14. Ex.P1 is the copy of judgment dated 5.11.2014 passed in CWP No.8140/2014 by the Hon'ble High Court of H.P.

15. Ex. P2 is the copy of letter dated 21st May, 2015 regarding CWP No.8140/2014 titled as Shri Jeevan Kumar and another *Vs.* State of H.P. & others.

16. Ex. P3 is the copy of letter dated 1.5.2017 regarding CWP No.8140/2014 titled as Shri Jeevan Kumar and another *Vs.* State of H.P. & others.

17. Conversely, Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A

preferred as per Order 18 Rule, 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner had been working on muster roll. He also admitted that neither any notice, nor any proceedings were initiated against the petitioner for his absence. He admitted that Ex. P4 had been issued by the department. He further admitted that as per the record the initial date of engagement of the petitioner is 21.6.2000. He was also categorical that as per Ex. P4, workers figuring at serial nos.68 to 113 were junior to the petitioner. He was not aware as to how many of those workers had been regularized. He denied that despite the availability of funds with the department, the petitioner was not re-engaged. Self stated that, he had been coming to work at his own convenience.

18. Ex. RW1/B is the copy of mandays chart pertaining to the petitioner.

19. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/B, it can be gathered that the petitioner was initially appointed on 21.6.2000. Although, the petitioner claimed that he was initially engaged as a daily waged beldar on 1.1.1998, but he has not placed or exhibited on record any document in this regard. Then, it was itself suggested to the respondent (RW1) by the petitioner that as per the record his initial date of engagement is 21.6.2000. He admitted the suggestion. Putting of this suggestion by the petitioner leaves no doubt in mind that he admitted the contents of mandays chart Ex. RW1/B to be correct.

20. A plea was taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. Vs. Sh. Prem Chand*** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri Suneet Bhardwaj (RW1) clearly admitted that no notice had been issued to the petitioner, nor any inquiry was conducted against him for his absence. Thus, the plea of abandonment put forth by the respondent/employer is not established.

21. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had continuously worked with the respondent from January, 1998 uptil the year 2009.

22. Section 25-B of the Act defines "continuous service". In terms of sub-section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The petitioner claimed that he was employed on 1.1.1998 and his services were retrenched in the year 2009 and during this period he had worked continuously. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. The respondent claimed that the petitioner did not work for 240 days. From the mandays chart Ex. RW1/B, it becomes clear that the petitioner had not completed 240 days of service in twelve calendar months preceding his month and year of retrenchment, which as per the reference took place during August, 2009. Therefore, it cannot be said that he was in "continuous service for not less than one year" under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

24. Ex. P4 is the seniority list of daily labourer of Suket Forest Division, as it stood on 31.3.2014. Shri Suneet Bhardwaj (RW1) in his cross-examination admitted that this seniority list has been issued by their department. He also clearly admitted that as per this seniority list workers shown at serial Nos. 68 to 113 had been engaged after the petitioner. Manifest that the respondent admitted that the daily wagers whose names figure at serial Nos. 68 to 113 of the list were junior to the petitioner. Anyhow, looking to the seniority Ex. P4, it is apparent that S/Shri Hukam Chand and Nanak Chand, whose names figure at serial No. 68 and 69 of the list were appointed by the respondent in July, 2000. The services of the other persons as per this list from serial Nos. 70 to 113 were also engaged thereafter. At the cost reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex. RW1/B is 21.6.2000. There is nothing on record to show that the workers mentioned in the list from serial Nos. 68 to 113 were senior to the petitioner. Admittedly, the workers from serial Nos. 68 to 113 of the seniority list were still serving the respondent/department, as the seniority list depicted the tentative seniority of daily labourers of Suket Forest Division, as it stood on 31.3.2014. There is no denial of the fact on the part of the respondent that they all were engaged after the engagement of the services of the petitioner. This indicates that persons junior to the petitioner were still serving the respondent/department after his disengagement. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

25. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are not attracted in this case.

26. Such being the situation, it can safely be held that the respondent has contravened the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

27. While testifying in the Court as PW1, the petitioner has given his age as 44 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

28. The learned Deputy District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the

ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

29. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as ***Liaq Ram Vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)*** will also be advantageous on this aspect of the matter.

30. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another Vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer Vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another Vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. Vs. Raj Kumar, 2019 (160) FLR 791***, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about three years and actually worked for 71 days as per mandays chart on record and that his services were disengaged in the month of August, 2009, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about more than ***five years*** i.e. demand notice was given on 25.11.2014. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 44 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

31. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹ 15,000/- (Rupees fifteen thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from

the date of Award till its realization. Issues No. 1 and 2 are answered in the affirmative and decided in favour of the petitioner, while issue No.4 is answered in the negative and decided against the respondent.

Issue No.3:

32. Not pressed.

Relief:

33. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹ 15,000/- (Rupees fifteen thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 239/2014
Date of Institution : 18.7.2014
Date of Decision : 06.05.2019

Shri Naresh Kumar s/o Shri Rajender Kumar, r/o V.P.O. Balag, Sunder Nagar, District Mandi, H.P. *...Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv. For the Respondent(s)
: Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Naresh Kumar, s/o Shri Rajender Kumar, r/o V.P.O. Balag, Sunder Nagar, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during year 2010 to March 2011 and finally during April, 2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged as a daily waged beldar by the respondent in the year 2010 and had worked till the month of April, 2013. His services were illegally terminated by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) and the rules made there under. The petitioner had worked to the satisfaction of the respondent. He had never left the work. Fictional breaks were given to him from time to time by the respondent, despite there being sufficiency of work and funds. Juniors to him were retained and new/fresh hands had been engaged by the respondent after his termination. The respondent had violated the principle of ‘first come last go’. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, that the petition was bad on account of delay and laches and that the petition was premature and had become infructuous, were taken.

On merits, it is asserted that the services of the petitioner was engaged in Forest Range, Kangoo in the year 2010 and that he had only worked for 36 days. He had only worked for 61 days in the year 2011 and thereafter had abandoned the job. It was specifically denied that the petitioner had worked from the year 2010 upto the year 2013. The respondent had never terminated/interrupted or ceased the services of the petitioner. Junior persons are continuously attending the work, but the petitioner has not reported to work after the year 2011. There has been no violation of the provisions of the Act by the respondent. The principle of ‘first come last go’ has not been violated. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 27.4.2016:

1. Whether time to time termination of the services of petitioner during year, 2010 to March, 2011 by the respondent is illegal and unjustified as alleged? ...*OPP.*
2. Whether final termination of services of the petitioner by the respondent during April, 2011 is illegal and unjustified as alleged? ...*OPP.*
3. If issue No.1 & issue No.2 or both are proved in affirmative to what relief petitioner is entitled to? ...*OPP.*
4. Whether the present claim petition/reference is not maintainable in the present form as alleged?
5. Whether the claim petition has become infructuous as alleged. If so, its effect? ...*OPR.*
6. Whether claim petition is bad on account of delay and laches on the part of the claimant as alleged? ...*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Naresh Kumar examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The learned counsel for the petitioner has tendered on behalf of the petitioner copy of demand notice as Ex. P1, copy of reply to demand notice as Ex. P2, copy of information under RTI as Ex. P3, copy of notification dated 8.7.2013 as Ex.P4, copy of regularization list as Ex.P5 and copy of seniority list as Ex.P6. The respondent examined one Shri Suneet Bhardwaj as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of mandays chart of the petitioner as Ex. RW1/B.

7. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No.1</i>	: Negative
<i>Issue No.2</i>	: Negative
<i>Issue No.3</i>	: Negative
<i>Issue No.4</i>	: Affirmative
<i>Issue No.5</i>	: Not pressed
<i>Issue No.6</i>	: No
<i>Relief</i>	: Petition is dismissed as per operative part of the Award.

Issue No. 1 to 3

REASONS FOR FINDINGS

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Naresh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that there is seasonal work in the department. However, he admitted that he was provided the work by the department, as and when he had approached it. Volunteered that, the department had shown less working days. He denied that the department had never removed him from work. He also denied that he had not completed 240 days in any year. Further, he denied that no junior to him had been kept at work by the department. It was also denied by him that only those workers had been regularized by the department who had worked continuously and had fulfilled the conditions of the policies of the government for regularization. He admitted that he owns land, which he cultivates. He denied that he himself had abandoned the work and had given a phoney statement.

11. Ex. P1 is the copy of demand notice relating to the petitioner.

12. Ex. P2 is the copy of reply to the demand notice dated 27.9.2013.

13. Ex.P3 is the copy of letter dated 3.8.2017 regarding information under RTI Act, 2005.

14. Ex. P4 is the copy of letter dated 8th July, 2013 regarding regularization of daily waged workers/contingent paid workers.

15. Ex. P5 is the copy of regularization policy notified *vide* letter no. PER(AP)-C-B(2)-1/2014 dated 7th May, 2015 (Seven years continuous service with required minimum mandays).

16. Ex. P6 is the copy of seniority list of daily labourer of Suket Forest Division as on 31.3.2014.

17. Conversely, Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that there was inconsistency in their Divisional record. He also denied that the petitioner had worked regularly. Further, he denied that the petitioner had worked upto April, 2013 and that the department had removed him wrongly. He admitted that Ex. RB does not show any attendance. He denied that the name of the petitioner had to be there in the seniority list.

18. Ex. RA and Ex. RB are the copies of letter dated 15.1.2018 regarding application for right to information Act, 2005.

19. Ex. RW1/B is the copy of mandays chart pertaining to the petitioner.

20. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The petitioner has not placed and exhibited on the file any document evidencing that he had continuously worked under the respondent upto April, 2013, as claimed. The mandays chart Ex. RW1/B is not in dispute. Looking to the mandays chart, it can be gathered that the services of the petitioner were initially engaged by the respondent in the year 2010 and that he worked with the respondent/department intermittently upto the year 2011.

21. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent during the year 2010 to March, 2011 (as mentioned in the reference) or not?

22. To my mind, the answer to this query is in the negative. The mandays chart Ex. RW1/B clarifies that in the years 2010 and 2011, the petitioner had worked for less than 100 days in both these years. No explanation is forthcoming on behalf of the petitioner as to why he had served for less than 100 days in the years 2010 and 2011. The petitioner (PW1) in his cross-examination admitted that as and when he had approached the department, he was given the work. The mandays chart Ex. RW1/B highlights that from the year of his initial engagement to the year 2011, the petitioner did not complete 240 days of work in any calendar year of his employment. The respondent has categorically pleaded and stated that the petitioner was an intermittent worker, who used to work as per his convenience and sweet will. Taking into account the working pattern of the petitioner, by no stretch of imagination it can be said that artificial breaks in service were provided to him by the respondent, as alleged.

23. Now comes the question as to whether in the month of April, 2011, the services of the petitioner were finally terminated by the respondent or not?

24. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during April, 2011. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in April, 2013. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had been finally terminated by the respondent in the month of April, 2013. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Since, it has not been pleaded nor stated by the petitioner that his services stood terminated by the respondent in April, 2011, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

25. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner and that his services were not finally terminated by the respondent during April, 2011. He is not entitled to any relief.

26. These issues are answered in the negative and are decided against the petitioner.

Issue No.4:

27. Taking into account my findings on issues No. 1 to 3 above, it is held that the instant claim petition is not maintainable in the present form.

28. This issue is answered in the affirmative and in favour of the respondent.

Issue No.5:

29. Not pressed.

Issue No.6:

30. In ***Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

31. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.

32. Thus, this issue is answered in the negative and is decided against the respondent.

Relief:

33. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with costs

quantified at Rs.3,000/- (Rupees three thousand only). The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 87/2015
Date of Institution : 25.2.2015
Date of Decision : 06.05.2019

Shri Ramesh Kumar s/o Shri Brij Lal, r/o Village Bag, P.O. Rakol, Sub Tehsil Nihari,
District Mandi, H.P.*Petitioner*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
....*Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv. For the Respondent(s)
: Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ramesh Kumar s/o Shri Brij Lal, r/o Village Bag, P.O. Rakol, Sub-Tehsil Nihari, District Mandi, H.P. by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. during February, 2013 and changing his service conditions during his length of service as alleged by the worker, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. After the receipt of the abovementioned reference, a corrigendum dated 21st May, 2018 was received from the appropriate government which reads:

“Whereas, a reference has been made to the Ld. Labour Court-cum- Industrial Tribunal, Dharamshala, District Kangra, H.P. *vide* notification of even no. dated 11.02.2015 for legal adjudication. However, inadvertently the correct facts could not be mentioned about the date of time to time termination of the said notification. Therefore, the same may be read as “July, 2004 to February, 2013” instead of “February, 2013”.

3. The case of the petitioner, as it emerges from the statement of claim is that he was engaged as a daily waged beldar by the respondent in the year 2000 in Forest Range Jhungi and had worked till the year 2013. He was an obedient and hardworking employee and had worked continuously with the respondent/employer. After his engagement juniors had also been kept by the respondent. His services were verbally terminated by the respondent illegally. The respondent had violated the principle of ‘first come last go’. New/fresh hands had also been engaged by the respondent after the termination of the petitioner. At the time of disengagement of the petitioner, work and funds were available. The juniors had been retained, who subsequently had been regularized/work charged by the respondent. The respondent had also acted in violation of Section 9-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short), by employing him on work order/bill basis. His service conditions were unilaterally changed by the department. The respondent had also violated the provisions of Section 13-A of Payment of Wages Act, as the record had not been maintained. The petitioner, thus, prays for his re-engagement with all consequential benefits.

4. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and the petition had become infructuous, as the petitioner had worked intermittently with the respondent and that he had never been retrenched, have been taken.

On merits, it is asserted that the petitioner was engaged in Forest Range Jhungi in the month of July, 2004 and had worked intermittently upto April, 2015. He thereafter had left the job of his own sweet will. The services of the petitioner had never been terminated. No juniors to the petitioner are working. He denied that the services of the petitioner had been engaged in the year 2000. Daily wage casual labourers were being engaged as per the requirement of work and funds. Some times fresh persons were required to be engaged due to heavy requirement and to finish the plantation and other related works during the rainy/winter seasons, when old daily wagers were not enough. The petitioner is still working with the respondent/department intermittently. Whenever the petitioner had approached for work, his services had been utilized by the department and had never been deprived of the work. The principle of ‘last come first go’ had not been violated by the respondent/department. The respondent had also not violated the provisions of Section 9-A and 10 of the Act. The services of the petitioner had been utilized on bill basis as per government Notification No.FFE-BC(1)-35/2009 dated 28.4.2009. The service conditions of the petitioner had never been changed from muster to bill basis. The respondent, thus, prays for the dismissal of the claim.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

6. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 27.4.2016:

1. Whether termination of the services of petitioner during Feb., 2013 and changing his service conditions during his length of service by the respondent is illegal and unjustified as alleged? ...*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

3. Whether the claim petition/reference is not maintainable in the present form as alleged? ...*OPR*.
4. Whether the claim petition become infructuous as alleged. If so, its effect? ...*OPR*.

Relief

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ramesh Kumar examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of demand notice as Ex. PW1/B, copy of reply to the demand notice as Ex. PW1/C, copy of mandays chart as Ex. PW1/D, copy of amended demand notice as Ex. PW1/E, copy of RTI information as Ex. PW1/F, copy of RTI information dated 3.8.2017 as Ex. PW1/G, copy of demand notice of Shri Yashwant Singh as Ex. PW1/H, copy of RTI information dated 10.9.2013 as Ex. PW1/J, copy of reply to demand notice as Ex. PW1/K, copy of mandays chart of Yashwant as Ex. PW1/L, copy of amended demand notice of Sh. Yashwant Singh as Ex. PW1/M and copy of seniority list of daily wagger as Ex. PW1/N. The respondent examined one Shri Suneet Bhardwaj as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of mandays chart of the petitioner as Ex. RW1/B and copy of notification dated 28.4.2009 as Ex. RW1/C.

8. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: Negative
<i>Issue No. 2</i>	: Negative
<i>Issue No. 3</i>	: Yes
<i>Issue No. 4</i>	: Not pressed
<i>Relief</i>	: Petition is dismissed as per operative part of the Award.

Issue No.1 to 3:

REASONS FOR FINDINGS

10. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

11. Shri Ramesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that seasonal work is done in the forest department. He also admitted that he even after February, 2013 had worked with the department. He was categorical that he had never been terminated by the department in February, 2013. Volunteered that, he was being terminated from time to time. He denied that he had been working intermittently. He also denied that no breaks were given to him by the department. Further, he denied that no junior to him had been retained and that he had given a phoney statement.

12. Ex. PW1/B is the copy of demand notice pertaining to the petitioner.

13. Ex. PW1/C is the copy of reply to the demand notice.

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14. Ex. PW1/D is mandays chart relating to the petitioner.
15. Ex. PW1/E is the copy of application for amendment of demand notice pertaining to the petitioner.
16. Ex. PW1/F is the copy of letter dated 1.2.2016 regarding supply of information under Section 7(1) of the Right to Information Act, 2005.
17. Ex. PW1/G is the copy of letter dated 3.8.2017 regarding information under RTI Act, 2005.
18. Ex. PW1/H is the copy of demand notice dated nil relating to Shri Yashwant Singh.
19. Ex. PW1/J is the copy of letter dated 10.9.2013 regarding demand notice/industrial dispute issued by the Conciliation Officer, Sunder Nagar to the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
20. Ex. PW1/K is the copy of reply dated 23.8.2013 to the demand notice.
21. Ex. PW1/L is the copy of mandays chart relating to Shri Yashwant Singh.
22. Ex. PW1/M is the copy of application for amendment of demand notice pertaining to Shri Yashwant Singh.
23. Ex. PW1/N is the copy of seniority list of daily labourers of Suket Forest Division as on 30.11.2011.
24. Ex. PW1/D is the copy of regularization policy notified *vide* letter no.PER(AP)- C-B(2)-1/2014 dated 7th May, 2015 (seven years continuous service with required minimum mandays).
25. Conversely, Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.
- In the cross-examination, he admitted that the petitioner had been engaged as a daily wager by the department in the year 2004. He specifically denied that after the year 2013, the petitioner had been removed. However, he admitted that in the seniority list some workers were junior to the petitioner. He also admitted that neither any notice, nor any inquiry had been conducted against the petitioner for his time to time abandonment.
26. Ex. RW1/B is the copy of mandays chart relating to the petitioner.
27. Ex. RW1/C is the copy of notification dated 28.4.2009 issued by the Addl. Chief Secretary (Forests) to the Government of Himachal Pradesh.
28. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. From the mandays chart Ex. RW1/B, it can be gathered that the petitioner was initially appointed in July, 2004. Although, the petitioner claimed that he was

initially engaged as a daily waged beldar in the year 2000, but he has not placed or exhibited on record any document in this regard. Then, it was itself suggested to the respondent (RW1) by the petitioner that he had been engaged by the department in the year 2004. He admitted the suggestion. Admission of this suggestion of the petitioner by the respondent leaves no doubt in mind that the petitioner admitted the contents of mandays chart Ex. RW1/B to be correct.

29. As per the corrigendum reference received from the appropriate Government, the point of dispute referred to this Court is as to whether there has been time to time termination of the petitioner from July, 2004 to February, 2013? However, when the statement of claim filed by the petitioner is seen, no case of artificial/fictional breaks in service has been set up by the petitioner. He only claimed that his services had been improperly and illegally terminated. No such issue has also been framed in the case by the learned predecessor-in-office of mine.

30. Anyhow, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent or not?

31. A perusal of the mandays chart, Ex. RW1/B discloses that the petitioner had worked under the respondent from the month of July, 2004 to the month of April, 2015. The petitioner (PW1) in his cross-examination admitted that even after February, 2013 he had worked with the department. A glance at the mandays chart also reveals that the petitioner did not serve the respondent even for a single day in the years 2006 to 2008, 2010 and 2011 respectively.

32. No doubt, while under cross-examination, the petitioner (PW1) denied the suggestion that he had never been given breaks by the department but, however, it is my humble opinion that if intentional breaks in service were being provided to him by the respondent time and again, then why he did not agitate the said fact earlier or at the time of the receipts of payments for the working days actually put in by him. A person not working for a single or for less than 50 days in the whole year cannot be permitted to countenance that artificial/fictional breaks were provided to him by the respondent/employer wrongly and illegally. The fact that the petitioner remained tight lipped and complacent about his rights for about two years and had received the payments without any protest only goes to show that no artificial/fictional breaks were given to the petitioner by the respondent during the course of the employment.

33. Now comes the question as to whether in the month of February, 2013, the services of the petitioner were finally terminated by the respondent (as alleged) or not?

34. The version of the petitioner is that he had worked with the respondent/department till the year 2013. His services had been terminated by the respondent wrongly and illegally. As per the initial reference received from the appropriate Government, the services of the petitioner had been terminated in February, 2013. It is not the case of the petitioner that the mandays chart Ex. RW1/B produced by the respondent is incorrect. The mandays chart reveals that in March, 2014, the petitioner worked for 8 days with the respondent. After that, he had worked for 23 days and 11 days under the respondent in the months of October and November, 2014 respectively. He thereafter had also worked for the months of February, March and April, 2015 with the respondent. Since, the petitioner served the respondent after February, 2013, as he had worked from March, 2014 upto April, 2015 for a number of days, I am at a loss to understand as to how it lies in his mouth to say that his services were disengaged by the respondent in February, 2013 in a wrongful manner. From the statement made by the petitioner (PW1), it can be gathered that even after the year 2013, he had worked with the respondent. He also clearly admitted that he had never been disengaged by the department in February, 2013. It is well settled that admission is the best piece of evidence and the facts admitted need not be proved. However, the said facts also find support from the mandays chart, Ex. RW1/B. The services of

the petitioner were never finally terminated by the respondent in the month of February, 2013, as alleged. As no retrenchment order was passed by the respondent in the month of February, 2013, it cannot be said that the termination/retrenchment order is illegal and unjustified.

35. The petitioner's allegation that the respondent had violated the provisions of Section 9-A of the Act, as his service conditions had been changed unilaterally by the respondent without notice, who earlier was working on muster rolls and thereafter was employed on work order/bill basis, to my mind, does not appear to have been established for want of plausible evidence. No muster rolls or bill vouchers have seen the light of the day.

36. It appears to me that the avarice of the petitioner to grab the job, money and other undue benefits has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

37. These issues are decided against the petitioner and in favour of the respondent.

Issue No. 3

38. In view of my findings on issues No. 1 and 2 above, it is held that the claim petition is not maintainable in the present form. The same is malafide.

39. This issue is also decided against the petitioner and in favour of the respondent.

Issue No. 4:

40. Not pressed.

Relief:

41. As a sequel to my findings on issues No.1 to 4 above, the instant claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified as Rs.3,000/- (Rupees three thousand only). The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 265/2015
Date of Institution : 27.6.2015
Date of Decision : 06.5.2019

Shri Sunder Lal s/o Shri Sher Singh, r/o Village Dali, P.O. Rewalsar, Tehsil Sadar,
District Mandi, H.P. ...Petitioner.

Versus

The Divisional Forest Wildlife Division, Kullu, District Kullu, H.P.

...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Gurdev Singh, Adv. For the Respondent(s)
: Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Sunder Lal s/o Shri Sher Singh, r/o Village Dali, P.O. Rewalsar, Tehsil Sadar, District Mandi, H.P. during August, 1994 to January, 2010 and finally during February, 2010 by the Divisional Forest Wildlife Division, Kullu, District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar by the respondent *w.e.f.* 1.3.1994 and had continuously worked as such upto 31.12.1999. His services were terminated by the respondent after 31.12.1999 without any notice or compensation. He had completed 240 days in the preceding twelve calendar months. After his termination, the respondent had retained juniors, who were also performing the same work/duties, as by the petitioner. Junior, namely, Shri Dhameshwar was retained on 16.12.2009 and is still working. The respondent has violated the provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The petitioner had filed an O.A. before the Hon’ble Administrative Tribunal, which was disposed of on the point of jurisdiction. A wrong mandays chart had been given to the Labour-cum-Conciliation Officer, Mandi by the respondent. The action of the respondent is stated to be in violation of the provisions of Section 25 of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection regarding lack of maintainability, as no legal and fundamental right of the petitioner had been infringed by the respondent, has been taken.

On merits, it was asserted that the services of the petitioner were never engaged as a daily waged beldar *w.e.f.* 1.3.1994 at Mini Zoo, Riwalsar, District Mandi, H.P. nor he had been terminated from the work. He had been engaged temporarily *w.e.f.* August, 1994 as a casual labourer, as per the availability work and funds with the respondent. It is further asserted that the petitioner had worked intermittently upto the year 2010. From the year 2003 upto the year 2009, the petitioner had not worked for a single day. He had left the work of his own sweet will. He had not completed 240 days in the preceding twelve calendar months and so had not fulfilled the conditions as envisaged under Section 25-B of the Act. The respondent had not violated any of the provisions of the Act. As per the record, the petitioner had worked for 331 days in the year 1999, 174 days in the year 2000, 59 days in the year 2001 and 9 days in the year 2002, as per the availability of the work. Thereafter, he himself had left the work and had never approached the

respondent for his re-engagement *w.e.f.* April, 2002 to January, 2010. Even no representation was made by him for work with the respondent for a period of eight years. No junior had been appointed in place of the petitioner. Shri Dhameshwar was engaged as a part-time worker *w.e.f.* 1.7.1996 to 15.12.2009. On completion of ten years of continuous services, as on 31.3.2009 he was converted to a daily waged worker by the department. It was admitted that the Hon'ble Administrative Tribunal had directed the respondent to give opportunity to the petitioner as and when work was available. He had been engaged from February, 1999 to March, 2002. Thereafter, he himself abandoned the job. The petitioner is gainfully employed as an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 26.10.2017:

1. Whether time to time termination of services of the petitioner by the respondent during August, 1994 to January, 2010 is/was improper and unjustified as alleged?
...*OPP.*
2. Whether final termination of services of petitioner during February, 2010 is/was improper and unjustified?
...*OPP.*
3. If issue no.1 & issue no.2 or both are proved in affirmative, to what relief petitioner is entitled to?
...*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged?
...*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sunder Lal appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of order dated 18.6.1998 as Ex.PW1/B, copy of demand notice as Ex.PW1/C, copy of reply to the demand notice as Ex.PW1/D, copy of rejoinder to the demand notice as Ex.PW1/E and copy of mandays chart as Ex.PW1/F. The respondent examined one Shri Rakesh Kumar as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B and copy of letter dated 13.10.1999 as Ex. RW1/C.

7. Arguments of the learned counsel for the petitioner and learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No.1</i>	: Negative
<i>Issue No.2</i>	: Negative
<i>Issue No.3</i>	: Negative
<i>Issue No.4</i>	: Yes
<i>Relief</i>	: Petition is dismissed as per operative part of the Award.

ISSUES No.1 To 3:

REASONS FOR FINDINGS

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Sunder Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had worked with the respondent from the year 1994 upto the year 2010. He denied that he had not done any work with the respondent from the year 2003 upto the year 2009. He admitted that seasonal work is done in the forest department. He specifically denied that as and when he had approached the department for work, he was provided the work. He admitted that he had never been disengaged by the respondent in the year 1999. He also admitted that from the year 1994 upto the year 2010 he had worked intermittently. He denied that after February, 2010, he had abandoned the work. He also denied that the department had never disengaged him. He clearly admitted that he had never completed 240 days or more in any year. Volunteered that, he had done it in the year 1999. He admitted that Shri Dhameshwar was engaged by the department as a part-time worker and who subsequently had been converted as a daily wage. He denied that after the year 1999, no junior workers had been engaged. He owns 5-6 bighas of land, which is joint and which he cultivates. Further, he denied that he has given a phoney statement.

11. Ex. PW1/B is the copy of interim/final order dated 13.7.1999 passed in OA(M204 of 1998) by the Hon'ble Administrative Tribunal.

12. Ex. PW1/C is the copy of demand notice relating to the petitioner.

13. Ex. PW1/D is the copy of reply to the demand notice.

14. Conversely, Shri Rakesh Kumar, Divisional Forest Officer, Wildlife Division, Kullu, District Kullu, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by him.

In the cross-examination, he admitted that in reply to the demand notice, they had claimed that the petitioner had not completed 240 days. He also admitted that in the year 1999 the petitioner had completed 240 days. Volunteered that, he had worked for 331 days. Thereafter, he had not worked for 240 days in any years. He specifically denied that time and again the petitioner had approached the department for his re-engagement. Shri Dhameshwar from the year 1993 upto the year 2009 had worked as a part-time worker and on completion of ten years, in the year 2009 itself, he was converted as a daily wage. He denied that junior had been engaged and that they had violated Section 25-F of the Act.

15. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wage. From the perusal of letter dated 19.5.2016 produced by the petitioner as Ex. PW1/F, it is evident that a month-wise casual labour chart of the petitioner has been given in it. From a perusal of this casual chart, which is not in dispute, it is evident that the services of the petitioner were initially engaged in August, 1994 by the respondent. Same is also evident from the mandays chart Ex. RW1/B of the petitioner, which has been produced on record by the respondent. However, for the other entries this mandays chart cannot be looked into, as its entries

are very much contrary to those of the casual labour chart in Ex. PW1/F. The respondent (RW1) in his cross-examination was categorical that in the year 1999 the petitioner had completed 240 days and has self deposed that he had worked for 331 days. Casual labour chart shows the number of working days by the petitioner in the year 1999 as 331 days, whereas in the mandays chart the petitioner is only shown to have worked for 92 days in 1999 throughout the year. Although, the petitioner in the statement of claim maintained that he had been appointed on 1st March, 1994 by the respondent, but he has not placed or exhibited on record any document in this regard. No doubt, the respondent in his reply alleged that the petitioner was a casual labourer but, however, the respondent had not placed/ exhibited on the file any document evidencing that the services of the petitioner were engaged as a casual/seasonal labourer for carrying out seasonal works only to his (petitioner's) knowledge. Moreover, as mentioned above, the casual labour chart in Ex.PW1/F reveals that in the year 1999, the petitioner had worked for 331 days with the respondent. A person working for 331 days in a year cannot be termed as a casual/seasonal labourer.

17. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent, as is stated in the reference?

18. The petitioner (PW1) in his cross-examination admitted that he had worked intermittently with the respondent from the year 1994 upto the year 2010.

19. If intentional breaks in service were being provided to the petitioner by the respondent time and again as alleged, then why he (petitioner) did not agitate the said fact earlier at the time of receipt of payments for the working days actually put in by him? Then, the month- wise casual chart of the petitioner in the letter Ex.PW1/F unfolds that in the year 1998 and from the years 2003 upto the year 2009, the petitioner had not worked for a single day with the respondent. A person not working for a single day or less than 50 days in the whole year cannot be permitted to countenance that artificial/fictional breaks were provided to him by the respondent/employer wrongly and illegally. The fact that the petitioner remained tight lipped and complacent about his rights for more than five years and had received the payments without any protests, speaks volumes about the truthfulness and veracity of such claim. No artificial/fictional breaks were given to the petitioner by the respondent during the course of his employment.

20. Now comes the question about the termination of the services of the petitioner, which as per the reference took place in the month of February, 2010.

21. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had continuously worked with effect from the year 1994 upto February, 2010 and had been completing more than 240 days in each calendar year.

22. Section 25-B of the Act defines "continuous service". In terms of sub-section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

23. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Although, in his chief-examination the petitioner claimed that he had worked with the Forest Department as a beldar/labourer in the Zoo at Riwalsar *w.e.f.* 1994 upto 2010, but as per the reference the services of the petitioner were terminated in February, 2010. A perusal of the casual labour chart relating to the petitioner in Ex. PW1/F shows that the petitioner had only worked for 24 days in the month of February, 2010. He had not worked for even a single day after March, 2002 upto January, 2010. Thus, he had not worked for more than 240 days preceding twelve calendar months from the date of his termination, which is stated in the reference as February, 2010. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

24. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. Though, it has been pleaded and stated by the petitioner that persons junior to him had been retained in service after his disengagement but, however, no seniority list has been placed/exhibited on record, nor any other witness examined so as to show that the principle of 'last come first go' had not been adhered to by the respondent. So far as the case of Shri Dhameswar is concerned, to a question put to him by the petitioner, the respondent has stated that he (Dhameswar) was engaged as a part-time worker in the year 1993 and who had worked as such till the year 2009 and after a period of ten years, he was converted to a daily wager in the year 2009. So, he cannot be said to be junior to the petitioner. Thus, there is nothing on record to establish that the principle of 'last come first go' had not been adhered to by the respondent. Then, no prayer had ever been made by the petitioner for the production of seniority list from the respondent during the pendency of this case.

25. Though, the petitioner in his substantive evidence has also claimed that new/fresh hands, namely, S/Shri Devender and Raj Kumar had been engaged, but his solitary version cannot be taken as a gospel truth in this behalf, because such claim has been denied by the respondent being wrong. No document has been proved on record by the petitioner to show that after allegedly dispensing with his services, the above-named persons had been engaged by the respondent.

26. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner and that the provisions of Sections 25-F, 25-G and 25-H of the Act had not been violated by the respondent. The petitioner is not entitled to any relief.

27. Both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 4:

28. Taking into account my findings on issues No. 1 to 3 above, it held that the instant claim petition is not maintainable in the present form.

29. This issue is decided in favour of the respondent and against the petitioner.

Relief:

30. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no

order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT
MANDI)**

Ref. No. : 63/2013
Date of Institution : 27-7-2013
Date of Decision : 08-05-2019

Smt. Leela Devi d/o Late Sh. Molak Ram, r/o Village Saphru, P.O. Rewalsar, Tehsil
Sunder Nagar, District Mandi, H.P. . . . *Petitioner.*

Versus

Director, Suket Hospital Pvt. Ltd. through its Directors, Near Lalit Chowk, Sunder
Nagar, District Mandi, H.P. . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Bimal Sharma, Adv.
For the Respondent : Sh. Abhishek Lakhanpal, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Leela Devi d/o Late Sh. Molak Ram, Village-Saphru, P.O. Rewalsar, Tehsil Sunder Nagar, Distt. Mandi, H.P. during March, 2009 by the management of M/s. Suket Hospital Pvt. Ltd., Near Lalit Chowk, Sunder Nagar, Distt. Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, salary, seniority, continuity in service, past service benefits and compensation the above workmen is entitled to from the above management?”

2. The case is listed for conciliation and appearance of both the parties but, however, Smt. Leela Devi (petitioner) has made the below given statement in the Court today:—

“ब्यान किया कि मेरा प्रत्यार्थी से समझौता हो गया है। प्रत्यार्थी ने मुझे full and final settlement मुबलिंग Rs.70,000/- देना माना है, जो मुझे मंजूर है। प्रत्यार्थी ने आज दिनांक 08/5/2019 को उपरोक्त रकम बजरिये Cheque No. 526970 dated 06/5/2019 Court में दिया है जो मैंने प्राप्त कर लिया है। उपरोक्त Cheque SBI Sunder Nagar का है। अब मेरा प्रत्यार्थी से कोई लेना देना न है। ब्यानो के अनुसार फैसला किया जावे।”

3. Shri Amar Singh, Administrative Officer, Suket Hospital Sunder Nagar, District Mandi, has also made the below given statement in the Court today:—

“ब्यान किया कि प्रत्यार्थी का प्रार्थिन के साथ आपसी समझौता हो गया है जिसके तहत प्रत्यार्थी ने मुबलिंग Rs.70,000/- full and final settlement of the claim के तौर पर प्रार्थिन को offer किया है जो उसे मंजूर है। प्रत्यार्थी प्रार्थिन को बजरिये Cheque No. 526970 dated 06/5/2019 SBI Sunder Nagar से उपरोक्त राशि का भुगतान कर दिया जायेगा।”

4. In view of the above statements, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

5. The reference is answered in the aforesaid terms.

6. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

7. File after due completion be consigned to the records.

Announced in the open Court today this 8th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT MANDI)

Ref No. : 875/2016
Date of Institution : 07-12-2016
Date of Decision : 09-5-2019

Shri Prakash Chand s/o Shri Achhar Singh, r/o Village Chowari, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Prakash Chand s/o Shri Achhar Singh, r/o Village Chowari, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. during December, 2010 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute *vide* demand notice dated nil received in the Labour Office Mandi on 21-01-2015 after delay of more than 4 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period from year, 1998 to December, 2010 and delay of more than 4 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar by the Forest Division Suket, Sunder Nagar in the year 1998 and had worked upto December, 2010. After the engagement of the petitioner, the respondent had engaged some persons junior to him. He was given time to time fictional breaks, despite sufficient work and funds. The name of the petitioner was not entered in the seniority list despite he being senior to others. The petitioner had worked continuously and sincerely with the respondent/department, but the respondent had illegally terminated his services by a verbal order. After the termination of the services of the petitioner, persons junior to him were retained. Persons junior to him, namely, S/Shri/Smt. Krishnoo, Ganga Ram, Harish, Smt. Indira, Balak Ram, Kamal Chand, Tej Ram and Amar Singh had been retained by the respondent and their names have been placed in the seniority list. Shri Baldev was shown to have been working since 1.1.2005 and his name was also placed in the seniority list. The respondent had not followed the principle of ‘last come first go’. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply wherein preliminary objections regarding lack of maintainability and that the petition is in-fructuous and time barred, have been taken. The contents of the petitioner were denied on merits. It is specifically denied that the petitioner had been engaged as a daily waged beldar by the respondent *w.e.f.* the year 1998 upto the year 2010. It is asserted that the petitioner had never been engaged by the respondent, so the question of maintaining the seniority list as well as casual card did not arise. It is also asserted that since the petitioner had never worked with the respondent, the question of giving him fictional breaks also did not arise. The petitioner had served the demand notice in the year 2015 which was duly replied by the respondent. It is asserted that the burden of proof to establish that the petitioner had worked for 240 days is upon him and not on the management. No juniors were retained. Only those workers were regularized, who had fulfilled the requisite criteria of regularization as per the policy of the Government. The respondent had not violated the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 30.5.2018:

1. Whether termination of the service of petitioner by the respondent during December, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition is time barred by limitation as alleged? . . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: Negative
<i>Issue No. 2</i>	: Negative
<i>Issue No. 3</i>	: No
<i>Issue No. 4</i>	: Not pressed

Relief. : Petition is dismissed per operative part of the award.

Issues No.1 to 2:

REASONS FOR FINDINGS

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in year 2010 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was also asserted that the petitioner had been engaged as a daily waged beldar in the year 1998 and he had continuously worked as such till the year 2010. It was further his claim that fictional breaks were given to him by the department from the year 1998 upto the year 2010 so that he could not complete 240 days, as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had never worked with the respondent, therefore, he cannot claim any protection under the provisions of the Act.

12. The case of the petitioner is that as he had continuously worked for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines “continuous service”. In terms of sub section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty Vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of December, 2010. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25- F of the Act are not attracted in this case.

15. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

16. The petitioner in paragraph 6 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Shri/Smt. Krishnoo, Ganga Ram, Harish, Smt. Indira, Balak Ram, Kamal Chand, Tej Ram and Amar Singh who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4

20. Not pressed.

Relief:

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of May, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT MANDI)

Ref. No. : 91/2017
Date of Institution : 28-3-2017
Date of Decision : 09-5-2019

Shri Pawan Kumar s/o Shri Durga Dass, r/o Village Koon, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Abhishek Lakhanpal, Adv.
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Pawan Kumar s/o Shri Durga Dass, r/o Village Koon, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. during October, 2013 (as alleged by the workman) by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar by the Forest Suket Division, Sunder Nagar in the year 1997 and had worked upto the year 2013. After the engagement of the petitioner, the respondent had engaged some persons junior to him. He was given time to time fictional breaks, despite sufficient work and funds. The name of the petitioner was not entered in the seniority list despite he being senior to others. The petitioner had worked continuously and sincerely with the respondent/department, but the respondent had illegally terminated his services by a verbal order.

After the termination of the services of the petitioner, persons junior to him were retained. The respondent/department had also engaged new/fresh hands. Persons junior to him, namely, S/Shri Het Ram and Roshan Lal had been retained by the respondent. Similarly, Shri Yashwant Singh and Shri Baldev were also retained by the respondent and their services have been regularized by the department. The respondent had not followed the principle of ‘last come first go’. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply wherein preliminary objections regarding lack of maintainability and that the petition is in-fructuous, have been taken. The contents of the petitioner were denied on merits. It is specifically denied that the petitioner had been engaged as a daily waged beldar by the respondent *w.e.f.* the year 2007 upto the year 2013. It is asserted that the petitioner had never been engaged by the respondent, so the question of maintaining the seniority list as well as casual card did not arise. It is also asserted that since the petitioner had never worked with the respondent, the question of giving him fictional breaks and the retaining of the juniors to him also did not arise. It is denied that the respondent had acted in a biased manner against the petitioner. The respondent had not violated the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The respondent, thus, prays for the dismissal of the claim.

4. No rejoinder has been filed on behalf of the petitioner.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 18.9.2018:

1. Whether termination of the service of petitioner by the respondent during October, 2013 is/was legal and justified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition has become in fructuous as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondent.

7. Arguments of the Learned Counsel for the petitioner and Learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: Decided accordingly
<i>Issue No. 2</i>	: Negative
<i>Issue No. 3</i>	: No
<i>Issue No. 4</i>	: Not pressed

Relief : Petition is dismissed per operative part of the award.

ISSUES No.1 To 2

REASONS FOR FINDINGS

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in year 2013 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1997 and had continuously worked as such till the year 2013. It was also his claim that fictional breaks were given to him by the department from the year 1997 upto the year 2013 so that he could not complete 240 days, as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 240 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It was contended by the learned Deputy District Attorney for the respondent that the petitioner had never worked with the respondent, therefore, he cannot claim any protection under the provisions of the Act.

12. The case of the petitioner is that as he had continuously worked for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of sub-section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty Vs.**

Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of October, 2013. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25- F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in paragraph 7 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Sh. Het Ram, Roshan Lal, Yashwant Singh and Baldev, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

17. Though, it was also the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. But, however, this averment of his has also remained a mere saying on record. No ocular or documentary evidence was led by him to show that after his alleged termination, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, issue No.1 is decided accordingly and issue no.2 is decided against the petitioner and in favour of the respondent.

Issue No. 3:

19. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4:

20. Not pressed.

Relief:

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT CHAMBA)

Ref. No. : 37/2018
Date of Institution : 12.12.2018
Date of Decision : 14.05.2019

Smt. Bindu Bala w/o late Shri Anil Kumar, r/o Village Malal, P.O. Andral, Tehsil Salooni, District Chamba, H.P. . *Petitioner.*

Versus

The General Manager/Director, M/s Virender Dogra Power Project Manjhal, Village Malal, Tehsil Salooni, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner
For the Respondent : Shri Anuj Kumar, Project Manager

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Smt. Bindu Bala w/o Late Shri Anil Kumar, r/o Village Malal, P.O. Andral, Tehsil Salooni, District Chamba, H.P. during March, 2017 (as alleged by workman) by the General Manager/Director, M/s Virender Dogra Power Project Manjhal, Village Malal, Tehsil Salooni, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor her counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex-parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor her counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of her services from March, 2017 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT CHAMBA)

Ref. No. : 09/2016
Date of Institution : 02.1.2016
Date of Decision : 14.05.2019

Smt. Prem Dei w/o Shri Mansa Ram, r/o Village Luj Tikri, P.O. Luj, Tehsil Pangi, District Chamba, H.P. *...Petitioner.*

Versus

The Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Panig, District Chamba, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : None for the petitioner
For the Respondent : Shri S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Prem Dei w/o Shri Mansa Ram, r/o Village Luj Tikri, P.O. Luj, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated-nil-received on 16.11.2011 regarding her alleged illegal termination of service during August, 2004 suffers from delay and laches? If not, whether termination of Smt. Prem Dei w/o Shri Mansa Ram, r/o Village Luj Tikri, P.O. Luj, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during August, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case was listed for evidence of the petitioner for today but, however, neither the petitioner nor her counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be

represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, she is unwilling to adduce evidence or argue her case.

8. In the instant case, neither the workman nor her counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of her services from August, 2004 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but her allegations therein have remained a mere saying on record, as no evidence in support thereof was led on record by her. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 138/2014
Date of Institution : 05.4.2014
Date of Decision : 20.5.2019

Shri Vijay Kumar s/o Shri Bhuri Singh, r/o Village & P.O. Dohag, Tehsil Joginder
Nagar, District Mandi, H.P. *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. ...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Vijay Kumar s/o Sh. Bhuri Singh, Village & P.O. Dohag, Tehsil Joginder Nagar, Distt. Mandi, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, w.e.f. March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Agronomy department w.e.f. the year 2004 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agronomy department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agronomy department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow to him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent w.e.f. March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year w.e.f. the year 2004 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this court vide Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference no.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After

termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agronomy department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. As and when the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No.FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during April, 2004, for which he has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on

muster roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done by some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis from April, 2004 and as an unregistered contractor from the year 2005 to February, 2009. He raised various bills. The head of department had not violated any provisions of the Act. The petitioner himself refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishwavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per requirement of the project work. The HOD concerned used to verified the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar project from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*

5. Whether the petitioner has no cause of action to file the present case as alleged?

. . OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Vijay Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of letter dated 13.11.1998 as Ex. PW1/D, copy of letter dated 17.2.1999 as Ex. PW1/E, copy of letter dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statue as Ex. PW1/H, copy of proceeding dated 1.4.2009 as Ex. PW1/I, copy of Agreement as Ex. PW1/J and copy of Seniority list as Ex. PW1/K. The respondent examined one Dr. Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of history detail of workers as Ex. R-1, copy of tentative seniority list dated 4.10.2007 as Ex. R-2, copy of seniority list as on 31.3.2006 as Ex. R-3, copy of appendix of I.D. Act as Ex. R-4, copy of statute of university as Ex. R-5, copy of notification dated 13.11.1998 as Ex. R-6, copy of letter dated 8.7.1999 as Ex. R-7, copy of office order dated 17.2.1999 as Ex. R-8, copy of notification dated 26.4.1999 as Ex. R-9, copy of payment of Rs.4200/- as Ex. R-10, copy of bill of Rs.4200/- as Ex. R-A, copy of bill of Rs.21910/- as Ex. R-11, copy of bill payment voucher of Rs.5250/- as Ex. R-B, copy of bill payment of Rs.3500/- as Ex. R-12, copy of bill payment of Rs.3500/- as Ex. R-C, copy of bill payment of Rs.19600/- as Ex. R-13, copy of bill payment of Rs.3150/- as Ex. R-E, copy of bill payment of Rs.12600/- as Ex. R-15, copy of bill payment of Rs.3600/- as Ex. R-F, copy of bill payment of Rs.14250/- as Ex. R-16, copy of bill payment of Rs.3000/- as Ex. R-G, copy of bill payment of Rs.13000/- as Ex. R-17, copy of bill payment of Rs.5500/- as Ex. R-H, copy of bill payment of Rs.18200/- as Ex. R-18, copy of bill payment of Rs.8700/- as Ex. R-I, copy of bill payment of Rs.7100/- as Ex. R-19, copy of bill payment of Rs.7100/- as Ex. R-J, copy of Reference No.124/11 as Ex. R-20, copy of Reference No. 207/10 as Ex. R-21, copy of letter dated 29.1.2011 as Ex. R-22, copy of registration certificate dated 29.1.2011 as Ex. R-23, copy of renewal registration as Ex. R-24, copy of office order dated 29.9.2018 as Ex. R-25 and copy of office order dated 11.10.2018 as Ex. R-26.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Yes
Issue No. 5	: Yes

Relief : Petition is dismissed per operative part of the Award.

ISSUES No.1 And 2:

REASONS FOR FINDINGS

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Vijay Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of

his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he stated that he has not filed any record showing him to be a daily wager. He admitted that his name was not sponsored by the Employment Exchange. He clearly admitted that seniority list is prepared of only those persons who work on muster roll with the department. He was categorical that his name has never been there in the seniority list of the department. He further admitted that no objection was ever raised by him for his name being not reflected in the seniority list. Further, he admitted that all the workers engaged on muster roll by the university have been regularized as per the policy of the Government. He specifically denied that he had never been kept on muster roll. It was admitted by him that after the year 1998 no person was ever kept as a daily paid labourer by the university. He admitted his signatures on bill vouchers Ex. RA to Ex. RJ, *vide* which payments were made to him. He further admitted that all the workers like him have been kept at work on the project through the contractor. It was also admitted by him that under the contractor he had worked in the university upto 31.3.2013. He denied that he is making a phoney statement.

11. Ex. Px is the copy of letter dated 23rd July, 2002 regarding sanction to engage one Data Entry Operator on contractual basis.

12. Ex. Ex.Py is the copy of certificate relating to Shri Anil Kumar.

13. Ex. PW1/B is the copy of certificate pertaining to Smt. Promila Devi.

14. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

15. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

18. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

19. Ex. PW1/H is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

20. Ex. Ex. PW1/I is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

21. Ex. PW1/J is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

22. Ex. PW1/K is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

23. Conversely, Dr. Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed

as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2004. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2004 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. R-1 is the copy of working details of the petitioner.

25. Ex. R-2 is the copy of letter dated 26.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as stood on 31.3.2006.

26. Ex. R-3 is the copy of revised seniority list of the daily paid workers working in the CSKHVKV as it stood on 31.3.2006.

27. Ex. R-4 and R-5 are the extracts from the Industrial Disputes (Amendment) Act, 1982.

28. Ex. R-5 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

29. Ex. R-6 is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

30. Ex. R-7 is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions, which corresponds to Ex. PW1/C.

31. Ex. R-8 is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur, which is similar to Ex. PW1/E.

32. Ex. R-9 is the copy of letter dated 26.4.1999 issued by Comptroller, HPKV, Palampur which corresponds to Ex. PW1/F.

33. Ex. R10 is the copy of receipt relating to the petitioner.

34. Ex. RA is the copy of bill pertaining to the petitioner.

35. Ex. R-11 is the copy of contingent bill relating to Shri Sandeep Kumar and three others.

36. Ex. Ex. RB is the copy of bill relating to the petitioner.

37. Ex. R-12 and R-13 are the copies of contingent bills regarding payment of Rs.3500/- relating to the petitioner.

38. Ex. RC and Ex. RD are the copies of bills relating to the petitioner.

39. Ex. R-14 is the copy of contingent bill pertaining to Shri Vijay Kumar s/o Shri Ghanshyam and others.

40. Ex. RE is the copy of bill relating to the petitioner.

41. Ex. R-15 is the copy of contingent bill relating to Shri Duni Chand and others.

42. Ex. RF is the copy of bill 116 pertaining to the petitioner.

43. Ex. R-16 is the copy of contingent bill relating to Shri Raghu Ram and others.

44. Ex. RG is the copy of bill -120 relating to the petitioner.

45. Ex. R-17 is the copy of contingent bill pertaining to Shir Navneet Singh and another.

46. Ex. RH is the copy of Bill -136 relating to the petitioner.

47. Ex. R-18 is the copy of contingent bill pertaining to Shri Navneet Singh and another.

48. Ex. RI is the copy of bill 140 relating to the petitioner.

49. Ex. R 19 is the copy of contingent bill pertaining to the petitioner.

50. Ex. RJ is the copy of bill relating to the petitioner.

51. Ex. R20 is the copy of the Award passed in Reference No.124/2011 titled as Paramjeet Singh Vs. The Vice Chancellor, Chaudhary Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur by this Court.

52. Ex. R21 is the copy of the order dated 20.3.2014 passed in Reference No.207/2010 by this Court.

53. Ex. R22 is the copy of letter dated 29.1.2011 written by the Labour Officer-cum-Registering Officer District Kangra at Dharamshala to the Director, CSK HPKV, Palampur.

54. Ex. R23 is the copy of registration certificate dated 29.1.2011 issued by Labour Officer-cum-Registering Officer District Kangra at Dharamshala

55. Ex. R24 is the copy of registration certificate dated 5.8.2006 relating to Sahayata Security issued by Labour Officer-cum-Licensing Officer, Dharamshala.

56. Ex. R25 is the copy of office order dated 29.9.2018 issued by CSKHPKV, Palampur.

57. Ex. R26 is the copy of office order dated 11th October, 2018 issued by Registrar, CSK HPKV, Palampur.

58. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In *Workmen of Nilgiri Coop. Makgt. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514*, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

59. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, he tendered in evidence a copy of seniority list of daily waged workers in the university, as it stood on 31.3.2008. His name nowhere figures in this seniority list as a daily paid worker. Then, the respondent has tendered in evidence history detail of the petitioner as Ex. R1. It shows that the petitioner had worked in the year 2004 on work contract basis and thereafter from the year 2005 upto the year 2009 as an unregistered contractor himself. Later, as per this document, he is shown to have worked for the years 2010 and 2011 through registered contractors. Placed on record by the respondent is also the revised seniority list of daily paid workers as it stood on 31.3.2006, as Ex.R3. The name of the petitioner also does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that the bill vouchers through which payments were made to him, bear his signatures. Such bill vouchers are placed on the file as Ex.RA to Ex.RJ. All these bill vouchers reflect that payments had been made to the petitioner either on work contract basis or as a contractor. The admission on the part of the petitioner of these bill vouchers knocks the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in the very first line of his cross-examination clearly stated that he has not annexed any document to show that he was a daily waged worker. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.R11 to Ex.R19, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically admitted in his cross-examination that after the year 1998, the university had not engaged anyone as a daily paid labourer. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2004 as a daily paid worker. Furthermore, the petitioner has himself admitted that like him all the other workers are working in the project through the contractor. This admission on the part of the petitioner also does not prove that he was a daily waged worker on the rolls of the respondent. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely

be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

60. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2004 upto March, 2010, without any breaks. No such record has been seen in the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

61. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others Vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172.*** I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

62. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

63. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union Vs. I C A R US Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. Vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It

is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

64. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter as a contractor and later on under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

ISSUES No. 3 To 5:

65. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief:

66. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of May, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 141/2014
Date of Institution : 05.4.2014
Date of Decision : 20.5.2019

Shri Om Parkash s/o Shri Birbal, r/o Village Odder, P.O. Banoori, Tehsil Palampur,
District Kangra, H.P. ...Petitioner.

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Om Parkash S/O Sh. Birbal, Village-Odder, PO Banoori, Tehsil Palampur, Distt. Kangra, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university”.

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry & Organic Agriculture department *w.e.f.* 17.7.2007 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agroforestry & Organic Agriculture department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry and Organic Agriculture department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2007 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application no.25/2011 was withdrawn by the union. Reference No.207/2010 was also withdrawn by the union on

technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control and supervision of the project investigator and he had only been making the payments to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agroforestry & Organic Agriculture department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during July, 2007, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the

Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor from July, 2007 to January, 2009. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number which had been issued to Himachal Pradesh Krishi Vishwavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verified the work done, monthly attendance and wages bill of the Contractor/individual concerned to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*

4. Whether the petitioner has no locus standi to file the case as alleged? . . . OPR.

5. Whether the petitioner has no cause of action to file the present case as alleged? . . . OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Om Parkash appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of letter dated 13.11.1998 as Ex. PW1/D, copy of letter dated 17.2.1999 as Ex. PW1/E, copy of letter dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statue as Ex. PW1/H, copy of proceeding dated 1.4.2009 as Ex. PW1/I, copy of Agreement as Ex. PW1/J and copy of Seniority list as Ex. PW1/K. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Dr. Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of registration certificate of M/s. Sahayta Security Services as Ex. R-1, copy of letter dated 27.7.2011 as Ex. R-2, copy of letter dated 26.7.2011 as Ex. R-3, copy of certificate of registration dated 11.7.2014 as Ex. R-4, copy of registration dated 11.7.2012 as Ex. R-5, copies of agreement deeds as Ex. R-6 to Ex. R-11, copy of letter dated 4.10.2007 as Ex. R-12, copy of tentative seniority list as on 31.3.2006 as Ex. R-13, copy of letter dated 25.5.2009 as Ex. R-14, copy of seniority list of daily wagers as on 31.3.2008 as Ex. R-15, copy of appendix I.D. Act, 1947 as Ex. R-16, copy of statute as Ex. R-17, copy of notification dated 13.11.1998 as Ex. R-18, copy of letter dated 8.7.1998 as Ex. R-19, copy of office order dated 17.2.1999 as Ex. R-20, copy of notification dated 26.4.1999 as Ex. R-21, copy of history detail of petitioner as Ex. R-22, copies of bills as Ex. R-23 to Ex. R-50, copy of Reference No.124/11 as Ex. R-51, copy of Reference No.207/10 as Ex. R-52, copy of letter dated 29.1.2011 as Ex. R-53, copy of registration dated 29.1.2011 as Ex. R-54, copy of renewal certificate as Ex. R-55, copy of office order dated 29.9.2018 as Ex. R-56 and copy of office order dated 11.10.2018 as Ex. R-57.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No.1</i>	: No
<i>Issue No.2</i>	: No
<i>Issue No.3</i>	: Yes
<i>Issue No.4</i>	: Yes
<i>Issue No.5</i>	: Yes
Relief	: Petition is dismissed per operative part of the Award.

Issues No.1 and 2:

REASONS FOR FINDINGS

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Om Parkash examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid worker is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster roll of his has been placed on record by him. It was also admitted by him that as per policy of the Government only those employees were regularized, whose names were there in the muster roll. He also admitted that he had worked in various projects of different departments of the university and that Ex. PW1/B to Ex. PW1/F give a description of those projects. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

13. Ex. PW1/C is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/D is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

17. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidyalaya, Palampur.

18. Ex. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by the Registrar, CSK, HPKV, Palampur.

21. Ex. PW1/K is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

22. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

23. Ex. PW2/B is the copy of Certificate of registration dated 27.7.2011.

24. Ex. Px is the copy of letter dated 23rd July, 2002 regarding sanction to engage one Data Entry Operator on contractual basis.

25. Ex. Ex.Py is the copy of certificate relating to Shri Anil Kumar.

26. Conversely, Dr. Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2007. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2007 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

27. Ex. R-1 and Ex. R-2 are the copies of certificates of registration dated 29.1.2011 and 27.7.2011 issued by Labour Officer-cum-Registering Officer District Kangra at Dharamshala.

28. Ex. R-3 is the copy of application for registration of establishments employing contract Labour.

29. Ex. R-4 is the copy of certificate of registration dated 11.7.2014 issued by Labour Officer-cum-Registering Officer District Kangra at Dharamshala.

30. Ex. R-5 is the copy of application for registration of establishments employing contract labour.

31. Ex. R-6 to Ex. R-11 are the copies of agreement deeds executed between the CSK HPKV Palampur and various agencies.

32. Ex. R12 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

33. Ex. R13 is the copy of revised seniority list of the daily paid workers working in the CSKHPKV as it stood on 31.3.2006.

34. Ex. R-14 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

35. Ex. R-15 is the copy of seniority list of the daily waged workers in the CSK HPKV as it stood on 31.3.2008.

36. Ex. R-16 is the copy of extracts from the Industrial Disputes (Amendment) Act, 1982.

37. Ex. R-17 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

38. Ex. R-18 is the copy of Notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

39. Ex. R-19 is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

40. Ex. R-20 is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

41. Ex. R-21 is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

42. Ex. R-22 is the copy of working detail of the petitioner.

43. Ex. R-23 to Ex. R-50 are the copies of various bills pertaining to the petitioner and others.

44. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Makgt. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

45. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. He while under cross-examination was categorical that in case of a daily paid worker appointment letter is issued and that the university had not issued any appointment letter to him. Then, he tendered in evidence a copy of seniority list of daily waged workers in the university, as it stood on 31.3.2008, as Ex. PW1/K. A similar seniority list has also been placed and exhibited on record by the respondent as Ex. R15. His name nowhere figures in this seniority list as a daily paid worker. Then, the respondent has also tendered in evidence history detail of the petitioner as Ex. R22. It shows that the petitioner had worked from the year 2007 upto the year 2009 on work

contract basis and thereafter he is shown to have worked for the years 2010 and 2011 through registered contractors. Placed on record by the respondent is also the revised seniority list of daily paid workers as it stood on 31.3.2006, as Ex.R13. The name of the petitioner also does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university and its detail is there in Ex. PW1/B to Ex. PW1/F. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he has not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.R-23 to Ex. R-50 which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex.PW1/D, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2007 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

46. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2007 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer Vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Apex Court that the filing of an affidavit is only his own statement in his favour and it cannot be regarded as

sufficient evidence for any Court or Tribunal to come to a conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

47. In all fairness the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India Vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others Vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others Vs. State of Jharkhand and Ors. 2009 (122) FLR 172.*** For the reasons recorded hereinabove, as the petitioner has failed to establish on record that he was appointed as a daily paid worker on muster roll by the respondent, the petitioner cannot derive any advantage of what has been discussed in these cases.

48. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165.*** where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

49. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union Vs. I C A R US Foods and Farm and Others, 2015 LLR 974.*** wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. Vs. Association of Engineering Workers, 2008 LLR 509,*** wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

50. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and decided against the petitioner.

Issues No. 3 to 5%

51. Taking into account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has

been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and decided in favour of the respondent.

Relief:

52. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of May, 2019.

(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 140/2014
Date of Institution : 05.4.2014
Date of Decision : 20.5.2019

Shri Suresh Kumar s/o Shri Karam Chand, r/o Village & Post Office Arth Jhikli,
Tehsil Palampur, District Kangra, H.P. . . .Petitioner.

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi
Vishav Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. ...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Suresh Kumar s/o Sh. Karam Chand, Village & P.O. Arth Jhikli, Tehsil Palampur, Distt. Kangra, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Soil Science department w.e.f. November, 2006 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Soil Science department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Soil Science department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent w.e.f. March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year w.e.f. the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this court vide Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No.207/2010. It was accepted by the President of the union and application no.25/2011 was withdrawn by the union. Reference No.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent w.e.f. 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of the project investigator and he had only been making payments to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Soil Science department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis

of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days w.e.f. 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. As and when the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during November, 2006 for which he has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. He himself was a contractor prior to March, 2010. The worker had not turned to seek work from the respondent university at his own will. He as a contractor had raised bills in the years 2008 and 2009. The head of department had not violated any provisions of the Act. The petitioner himself did not attend the work after March/September, 2010, as he was not interested to work as a labourer. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The

HOD concerned used to verified the work done, monthly attendance and wages bill of the Contractor/individual concerned to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Suresh Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of letter dated 13.11.1998 as Ex. PW1/D, copy of letter dated 17.2.1999 as Ex. PW1/E, copy of letter dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statue as Ex. PW1/H, copy of proceeding dated 1.4.2009 as Ex. PW1/I, copy of Agreement as Ex. PW1/J and copy of Seniority list as Ex. PW1/K. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal, Director, Research, CSK, HPKV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of the petitioner's details as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/L, copy of Award dated 30.6.2014 as Ex. RW1/M, copy of letter dated 29.1.2011 as Ex. RW1/N, copy of

certificate of registration as Ex. RW1/O, copy of license as Ex. RW1/P, copy of application for registration as Ex. PW1/Q and copies of agreement deeds as Ex. RW1/R to Ex. RW1/W.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	:	No
<i>Issue No. 2</i>	:	No
<i>Issue No. 3</i>	:	Yes
<i>Issue No. 4</i>	:	Yes
<i>Issue No. 5</i>	:	Yes
<i>Relief</i>	:	Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Suresh Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that he had not got any appointment letter from the university. He clearly admitted that seniority list is prepared only of daily wagers. He was categorical that his name does not figure in the seniority list, nor he had raised any objection in this regard. Further, he admitted that all the workers engaged on muster roll by the university have been regularized as per the policy of the Government. He specifically denied that he had never been kept on muster roll. He had to admit that he has not annexed any muster roll with the petition. It was also admitted by him that he had worked in different projects of various departments of the university and that Ex. PW1/B to Ex. PW1/F give the description of the projects. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and he had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

13. Ex. PW1/C is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/D is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

17. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by the Registrar, CSK, HPKV, Palampur.

21. Ex. PW1/K is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

22. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

23. Ex. PW2/B is the copy of Certificate of registration dated 27.7.2011.

24. Conversely, Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2006. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in every

year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

25. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

26. Ex. RW1/C is the copy of working details of the petitioner.

27. Ex. RW1/D is the copy of contingent bill relating to the petitioner.

28. Ex. RW1/E is the copy of bill pertaining to the petitioner.

29. EX. RW1/F is the copy of contingent bill relating to Shri Karam Singh and another.

30. Ex. RW1/G is the copy of bill relating to the petitioner.

31. Ex. RW1/K is the copy of contingent bill pertaining to the petitioner.

32. Ex. RW1/L is the copy of bill relating to Shri Karam Chand.

33. Ex. RW1/B is the copy of statutes of CSK HPKV, Palampur.

34. Ex. RW1/B2 is the copy of letter dated 31st March, 2010 regarding outsourcing of service issued by the Deputy Registrar (Admn.) CSK HPKV, Palampur to the Director of Research, CSKHPKV, Palampur.

35. Ex. RW1/N to Ex. RW1/P are the copies of registration certificates issued by Labour Officer-cum-Registering Officer District Kangra at Dharamshala.

36. Ex. RW1/Q is the copy of application for registration of establishments employing contract labour.

37. Ex. RW1/R is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK HPKV Palampur and M/s Sahayta Security Services Pvt. Ltd.

38. Ex. RW1/S is the copy of Agreement Deed dated 31st March, 2011 executed between the CSK HPKV Palampur and M/s Sun Security Services Pvt. Ltd.

39. Ex. RW1/T is the copy of Agreement Deed dated 30th March, 2012 executed between CSK HPKV Palampur and M/s. Nuvision Commercial & Escort Services.

40. Ex. RW1/U is the copy of Agreement Deed dated 18th June, 2013 executed between CSK HPKV Palampur and M/s. Nuvision Commercial & Escort Services.

41. Ex. RW1/V is the copy of Agreement Deed dated 31st March, 2015 executed between CSK HPKV Palampur and M/s. Nuvision Commercial & Escort Services.

42. Ex. RW1/W is the copy of Agreement Deed dated 12th May, 2015 executed between CSK HPKV Palampur and M/s. Nuvision Commercial & Escort Services.

43. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof

is on the workman to establish the employer-employee relationship. In *Workmen of Nilgiri Coop. Maktg. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514*, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

44. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked as an unregistered contractor and had raised the bills, payment of which had been made to him as a contractor for the work done. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/C. It shows that the petitioner had worked in the years 2006 to 2008 on work individual contract basis and thereafter for the period *w.e.f.* June, 2008 to March, 2010 as an unregistered contractor himself. Later, as per this document, he is shown to have worked for the years 2010 and 2011 through registered contractors. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex. PW1/K of daily waged workers in the university, as it stood on 31.3.2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university and its detail is there in Ex. PW1/B to Ex. PW1/F. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he had not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/D to Ex. RW1/G, Ex. RW1/K and Ex. RW1/L, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/D, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary

evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

45. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2006 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer Vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

46. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India Vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others Vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others Vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

47. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited Vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

48. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Uni on Vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. Vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is

nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

49. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter as a contractor and later on under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5:

50. Taking in to account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief:

51. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of May, 2019.

Sd/-
(**YOGESH JASWAL**)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 206/2014
Date of Institution : 03.5.2014
Date of Decision : 20.5.2019

Smt. Pawna Devi w/o Shri Prittam Chand, r/o Village Ghuggar, P.O. Palampur, Tehsil Palampur, District Kangra, H.P. *...Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidaylya (CSKHPKV), Palampur, District Kangra, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Pawna Devi w/o Shri Prittam Chand, r/o Village Ghuggar, P.O. Palampur, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university”.

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that her services were engaged by the respondent as a daily waged worker on daily rated basis in Tea Husbandry department *w.e.f.* the year 2004 and she continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, her attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Tea Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to her by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to her at the time of her appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Tea Husbandry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow her and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against her. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2004 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No.207/2010. It was accepted by the President of the union and application No.25/2011 was withdrawn by the union. Reference No.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, she had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A

failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During her services, the petitioner had worked under the control and supervision of the project investigator and he had only been making the payments to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla her attendance was marked by the Field Assistant of Tea Husbandry department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. As and when the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. She was engaged on work contract basis during March, 2005, for which she has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. Her wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to her for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, her name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never

worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done by some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and her services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at her own will. She had worked on Individual Work Contractor/unregistered contractor basis from March, 2005 to January, 2009. She raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner herself had refused to work under the registered contractor during the year 2010. She only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verified the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, she had worked in other similar projects from time to time. She is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . .*OPR.*
4. Whether the petitioner has no *locus standi* to file the case as alleged? . . .*OPR.*

5. Whether this court has no jurisdiction to file the present case as alleged? . . . *OPR.*
6. Whether the claim petition is not maintainable in the present form? . . . *OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . . *OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . . *OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . . *OPR.*
10. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Pawna Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceeding dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.2.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A & Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/K, copy of award dated 30.6.2014 as Ex. RW1/J, copy of order dated 20.3.2014 as Ex. RW1/K, copy of letter dated 29.1.2011 as Ex. RW1/L, copy of certificate of registration as Ex. RW1/M, copy of license of M/s Sahayta Security as Ex. RW1/N, copy of license dated 27.7.2011 as Ex. RW1/O, copy of contract license dated 16.7.2014 as Ex. RW1/P, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/Q to Ex. RW1/V, copy of extract for I.D. Act 1982 Mark-X and copy of statutes of CSKHPKV Palampur as Ex. RW1/W.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	:	No
<i>Issue No. 2</i>	:	No
<i>Issue No. 3</i>	:	Decided accordingly
<i>Issue No. 4</i>	:	Yes
<i>Issue No. 5</i>	:	Not pressed
<i>Issue No. 6</i>	:	Yes
<i>Issue No. 7</i>	:	Yes
<i>Issue No. 8</i>	:	Yes
<i>Issue No. 9</i>	:	Yes
Relief	:	Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Pawna Devi examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed certain documents purportedly in support of her claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, she admitted that she has not filed any document showing her to be a daily wager. She also admitted that in the muster roll the names of a different categories of workers are mentioned. She further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, she admitted that it does not bear her name. She also specifically admitted that her name also does not figure in the the final seniority list, Ex.R-2. Though, she denied that she had not raised any objection regarding the seniority list and has volunteered to state that she had raised an objection with the VC, but she had to admit that no such document has been placed on record by her. It was also admitted by her that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. She clearly admitted her signatures on Mark-RA-1 to Mark-RA-6 (now as Ex. RW1/D to Ex. RW1/I). She is working in the department on contingency. She denied that she is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2004. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, she was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2004 upto the year 2010, the petitioner had worked for 240 days in each year and that her mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/I are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/J is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/K is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/L is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/M is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/N is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/O is the copy of certificate of registration dated 27.7.2011 which corresponds to Ex. PW2/B.

35. Ex. RW1/P is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/Q is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/R is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/S is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/T is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/U is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/V is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/W is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Makgt. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that she was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which she had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between herself and the respondent. No document has been placed and exhibited on record by the petitioner to show that she was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that her name did not find mention in these seniority lists. No reason has been assigned by her as to why her name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, she claimed that an objection had been raised before the Vice Chancellor, but her such self serving statement is in air, as no document regarding the raising of objection against the seniority list has seen the light of the day. The petitioner clearly admitted that she had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner herself clearly admitted her signatures to be there on contingent bills, Ex. RW1/B to Ex. RW1/I. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that she was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by her that she was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, she ought to have been engaged on the muster rolls. No muster roll in her name has been placed and exhibited on record by the petitioner. This only goes to show that she had never been engaged on the muster roll. Further, the payment records Ex.RW1/D to Ex. RW1/I, nowhere reflect that the petitioner was a daily paid worker. She had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex.PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that she was appointed or engaged in the year 2004 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that she was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that she had worked continuously with the respondent from the year 2004 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, her name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in her name. No muster

roll has been filed by the petitioner, nor she had called for any such record so as to show that she indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that she had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on her part that as provided under Section 25-B of the Act, she had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that she had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that she had continuously worked for a period of 240 days in a calendar year, her submission in this regard is negated. In case titled as ***Range Forest Officer Vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only her own statement in her favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India Vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others Vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others Vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited Vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that she had been appointed through a licensed/unlicensed contractor, so that she could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Em ployees' Union Vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. Vs. Association of Engineering Workers , 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that she had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so she cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that she was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding her work, nor her name figured in

the seniority lists of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show her name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, as admitted by the petitioner, she is not entitled to any relief as claimed for by her. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue No.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues no. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 193/2014
Date of Institution : 03.5.2014
Date of Decision : 21.5.2019

Smt. Pawna Devi w/o Shri Vijay Kumar, r/o VPO Banuri, Tehsil Palampur, District Kangra, H.P. *...Petitioner*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidaylya (CSKHPKV), Palampur, District Kangra, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Pawna Devi, w/o Shri Vijay Kumar, r/o V.P.O. Banuri, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that her services were engaged by the respondent as a daily waged worker on daily rated basis in Tea Husbandry department *w.e.f.* the year 2001 and she continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, her attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Tea Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to her by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to her at the time of her appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Tea Husbandry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow her and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against her. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No.207/2010. It was accepted by the President of the union and application No.25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, she had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A

failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent w.e.f. 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During her services, the petitioner had worked under the control and supervision of the project investigator and he had only been making the payments to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla her attendance was marked by the Field Assistant of Tea Husbandry department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days w.e.f. 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. She was engaged on work contract basis during April, 2003, for which she has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. Her wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to her for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, her name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never

worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and her services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at her own will. She had worked on Individual Work Contractor basis/unregistered contractor from April, 2003 to January, 2009. She raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner herself had refused to work under the registered contractor during the year 2010. She only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, she had worked in other similar projects from time to time. She is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . . *OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . *OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . . *OPR.*
4. Whether the petitioner has no *locus standi* to file the case as alleged? . . . *OPR.*

5. Whether this court has no jurisdiction to file the present case as alleged? . . . *OPR.*
6. Whether the claim petition is not maintainable in the present form? . . . *OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . . *OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . . *OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . . *OPR.*
10. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Pawna Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificate of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/K, copy of award dated 30.6.2014 as Ex. RW1/J, copy of order dated 20.3.2014 as Ex. RW1/K, copy of letter dated 29.1.2011 as Ex. RW1/L, copy of certificates of registration as Ex. RW1/M, copy of license of M/s Sahayta Security as Ex. RW1/N, copy of license dated 27.7.2011 as Ex. RW1/O, copy of contract license dated 16.7.2014 as Ex. RW1/P, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/Q to Ex. RW1/V, copy of extract for I.D. Act Mark-X and copy of statutes of CSKHPKV Palampur as Ex. RW1/W.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: No
<i>Issue No. 3</i>	: Decided accordingly
<i>Issue No. 4</i>	: Yes
<i>Issue No. 5</i>	: Not pressed
<i>Issue No. 6</i>	: Yes
<i>Issue No. 7</i>	: Yes
<i>Issue No. 8</i>	: Yes
<i>Issue No. 9</i>	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Pawna Devi examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed certain documents purportedly in support of her claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, she admitted that she has not filed any document showing her to be a daily wager. She also admitted that in the muster roll names of different categories of workers are mentioned. She further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, she admitted that it does not bear her name. She also specifically admitted that her name also does not figure in the final seniority list, Ex.R-2. Though, she denied that she had not raised any objection regarding the seniority list and has volunteered to state that she had raised an objection with the VC, but she had to admit that no such document has been placed on record by her. It was also admitted by her that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. She clearly admitted her signatures on Mark-RA-1 to Mark-RA-6 (now as Ex. RW1/D to Ex. RW1/I). She is working in the department on contingency. She denied that she is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2001. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, she was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2001 upto the year 2010, the petitioner had worked for 240 days in each year and that her mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/I are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/J is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/K is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/L is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/M is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/N is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/O is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/P is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/Q is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/R is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/S is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/T is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/U is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/V is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/W is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Makgt. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that she was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which she had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between herself and the respondent. No document has been placed and exhibited on record by the petitioner to show that she was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that her name did not find mention in these seniority lists. No reason has been assigned by her as to why her name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, she claimed that an objection had been raised before the Vice Chancellor, but her such self serving statement is in air, as no document regarding the raising of objection against the seniority list has seen the light of the day. The petitioner clearly admitted that she had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner herself clearly admitted her signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/I. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that she was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by her that she was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, she ought to have been engaged on the muster rolls. No muster roll in her name has been placed and exhibited on record by the petitioner. This only goes to show that she had never been engaged on the muster roll. Further, the payment records Ex.RW1/D to Ex. RW1/I, nowhere reflect that the petitioner was a daily paid worker. She had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex.PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that she was appointed or engaged in the year 2001 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that she was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that she had worked continuously with the respondent from the year 2001 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, her name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in her name. No muster

roll has been filed by the petitioner, nor she had called for any such record so as to show that she indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that she had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on her part that as provided under Section 25-B of the Act, she had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that she had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that she had continuously worked for a period of 240 days in a calendar year, her submission in this regard is negated. In case titled as ***Range Forest Officer Vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only her own statement in her favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India Vs. S. Satyam and Ors. 1996 SCC (L&S) 1273***; ***State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others Vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited Vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that she had been appointed through a licensed/unlicensed contractor, so that she could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union Vs. ICARUS Foods and Farm a d Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. Vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that she had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so she cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that she was engaged as a daily paid

worker by the respondent. No muster roll was prepared regarding her work, nor her name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show her name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, she is not entitled to any relief as claimed for by her. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue No.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues no. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 197/2014
Date of Institution : 03.5.2014
Date of Decision : 21.5.2019

Shri Ajay Kumar s/o Shri Om Prakash, r/o Village Molichak, P.O. Saliyana, Tehsil Palampur, District Kangra, H.P. . . .Petitioner.

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidhayalya (CSKHPKV), Palampur, District Kangra, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ajay Kumar s/o Shri Om Prakash, r/o Village Molichak, P.O. Saliyana, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidhayalya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Tea Husbandry department w.e.f. January, 2006 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Tea Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidhayalya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Tea Husbandry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent w.e.f. March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year w.e.f. the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No.207/2010. It was accepted by the President of the union and application No.25/2011 was withdrawn by the union. Reference

No.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Tea Husbandry department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83, dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. He was engaged on work contract basis during May, 2008, for which he has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the

Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor from May, 2008 to January, 2009. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidhayalya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent w.e.f. March/April, 2010 is/was improper and unjustified as alleged? . . . *OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . *OPP.*

3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . . *OPR.*
4. Whether the petitioner has no *locus standi* to file the case as alleged? . . . *OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? . . . *OPR.*
6. Whether the claim petition is not maintainable in the present form? . . . *OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . . *OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . . *OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . . *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ajay Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/I, copy of award dated 30.6.2014 as Ex. RW1/J, copy of order dated 20.3.2014 as Ex. RW1/K, copy of letter dated 29.1.2011 as Ex. RW1/L, copy of certificate of registration as Ex. RW1/M, copy of license of M/s Sahayta Security as Ex. RW1/N, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/O, copy of contract license dated 16.7.2014 as Ex. RW1/P, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/Q to Ex. RW1/V, copy of extract for I.D. Act Mark-X and copy of statutes of CSKHPKVV Palampur as Ex. RW1/W.

7. Arguments of the Learned Authorized Representative for the petitioner and Learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

<i>Issue No.1</i>	: No
<i>Issue No. 2</i>	: No
<i>Issue No. 3</i>	: Decided accordingly
<i>Issue No. 4</i>	: Yes

<i>Issue No. 5</i>	: Not pressed
<i>Issue No. 6</i>	: Yes
<i>Issue No. 7</i>	: Yes
<i>Issue No. 8</i>	: Yes
<i>Issue No. 9</i>	: Yes
Relief	: Petition is dismissed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Ajay Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wageer. He also admitted that in the muster-roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by her. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster-rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-6 (now as Ex. RW1/D to Ex. RW1/I). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2006. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

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27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.
28. Ex. RW1/D to Ex. RW1/I are the copies of contingent bill relating to the petitioner and others.
29. Ex. RW1/J is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.
30. Ex. RW1/K is the copy of order dated 20.3.2014 passed in Reference No.207/2010 by this Court.
31. Ex. RW1/L is the copy of letter dated 29.1.2011 regarding registration of establishment.
32. Ex. RW1/M is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.
33. Ex. RW1/N is the copy of certificate of registration relating to M/s. Sahayata Security.
34. Ex. RW1/O is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.
35. Ex. RW1/P is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.
36. Ex. RW1/Q is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.
37. Ex. RW1/R is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.
38. Ex. RW1/S is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.
39. Ex. RW1/T is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.
40. Ex. RW1/U is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.
41. Ex. RW1/V is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.
42. Ex. RW1/W is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalya, Palampur.
43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.
44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex. R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/I. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term "employees", excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster-rolls. No muster-roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster-roll. Further, the payment records Ex. RW1/D to Ex. RW1/I, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17.2.1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily

paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2006 upto March, 2010, without any breaks. No such record has been seen in the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he in deed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the Learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the Learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and

supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster-roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue No.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief

54. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of May, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 174/2014

Date of Institution : 02-5-2014

Date of Decision : 22-5-2019

Shri Joginder Singh s/o Shri Raj Kumar, r/o VPO Bhattu Samula, Tehsil Palampur, District Kangra, H.P. .*Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya (CSKHPKV), Palampur, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Joginder Singh, s/o Shri Raj Kumar, r/o V.P.O. Bhattu Samula, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Fodder department *w.e.f.* the year 2008 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Fodder department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Fodder department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow to him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240

days in each calendar year w.e.f. the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference no.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent w.e.f. 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Fodder department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days w.e.f. 22.1.2000 on contract basis and his services have been regularized as a clerk by the respondent since 2010. As and when the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean

hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. His name does not figure in the seniority lists of daily paid workers of the university. It was asserted that as the petitioner had never been engaged by the respondent, so the question of issuing appointment letter to him did not arise. The demands of union had not been considered by the respondent on the grounds that the services of the workers had not been engaged as daily paid labourers on muster roll basis. The respondent had never forced the petitioner to work under the M/s Sahayata Security Services. No record has been placed on the file by the petitioner in support his claim. The provisions of the Act are not attracted in this case as the petitioner was not engaged by the respondent university. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that his services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:—

- (1) Whether termination of services of the petitioner by the respondent w.e.f. March/April, 2010 is/was improper and unjustified as alleged? .. *OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? .. *OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? .. *OPP.*
- (4) Whether the petitioner has no locus standi to file the case as alleged? .. *OPP.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? .. *OPP.*
- (6) Whether the claim petition is not maintainable in the present form? .. *OPP.*
- (7) Whether the petitioner has no cause of action to file the present case as alleged? .. *OPP.*

- (8) Whether the petitioner has not approached the Court with clean hands as alleged?
.. *OPP.*
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged?
.. *OPP.*

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Joginder Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceeding dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copy of Award dated 30.6.2014 as Ex. RW1/D, copy of order dated 20.3.2014 as Ex. RW1/E, copy of letter dated 29.1.2011 as Ex. RW1/F, copy of certificate of registration as Ex. RW1/G, copy of license of M/s Sahayta Security as Ex. RW1/H, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/I, copy of contract license dated 16.7.2014 as Ex. RW1/J, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/K to Ex. RW1/P, copy of extract for I.D. Act as Mark-X and copy of statutes of CSKHPKV Palampur as Ex. RW1/Q.

7. Arguments of the Learned Authorized Representative for the petitioner and Learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: No
<i>Issue No. 3</i>	: Decided accordingly
<i>Issue No. 4</i>	: Yes
<i>Issue No. 5</i>	: Not pressed
<i>Issue No. 6</i>	: Yes
<i>Issue No. 7</i>	: Yes
<i>Issue No. 8</i>	: Yes
<i>Issue No. 9</i>	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Joginder Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster-roll names of different categories of workers are mentioned. He further admitted that tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he denied that the petitioner was kept at work in the year 2008. Volunteered that, he had never worked with the respondent and thereafter stated that after the year 2010 the workers had been kept on outsource basis. Earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2004 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

29. Ex. RW1/E is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

30. Ex. RW1/F is the copy of letter dated 29.1.2011 regarding registration of establishment.

31. Ex. RW1/G is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

32. Ex. RW1/H is the copy of certificate of registration relating to M/s. Sahayata Security.

33. Ex. RW1/I is the copy of certificate of registration dated 27.7.2011 which corresponds to Ex. PW2/B.

34. Ex. RW1/J is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

35. Ex. RW1/K is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

36. Ex. RW1/L is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

37. Ex. RW1/M is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

38. Ex. RW1/N is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/O is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/P is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/Q is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishwavidyalaya, Palampur.

42. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

43. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily wages workers/Mess Helpers as it stood on 31.3.2008.

44. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

45. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had never been engaged by the university. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by his as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the

seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid seniority lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster-rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2008 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

46. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2008 upto April, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority lists maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

47. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273***; ***State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

48. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

49. Reference was also made by the petitioner to the case titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

50. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority lists of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, as admitted by the petitioner, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief

54. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no

order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of May, 2019.

YOGESH JASWAL,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshal, (H.P.).

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 112/2016
Date of Institution : 04-3-2016
Date of Decision : 23-05-2019

Shri Ravi Kumar s/o Shri Jeeto, r/o V.P.O. Sihunta, Tehsil Bhattiyat, District Chamba, H.P.
. *Petitioner.*

Versus

The Executive Engineer, Irrigation-cum-PH Division, Dalhousie, District Chamba, H.P.
...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. T.R. Bhardwaj, AR
For the Respondent : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ravi Kumar, s/o Shri Jeeto, r/o V.P.O. Sihunta, Tehsil Bhattiyat, District Chamba, H.P. *w.e.f.* 20-11-2000 by the Executive Engineer, Irrigation-cum-PH Division, Dalhousie, District Chamba, H.P., who has worked as beldar on daily wages basis only for 137 days, 329 days, 304 days, 365 days, 365 days, 365 days and 324 days during the years 1994, 1995, 1996, 1997, 1998, 1999 and 2000 respectively and has raised his industrial dispute demand notice dated nil received in the Labour Office Chamba during year, 2007 after delay of about 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 137 days, 329 days, 304 days, 365 days, 365 days, 365 days and 324 days during the years 1994, 1995, 1996, 1997, 1998, 1999 and 2000 respectively and delay for about 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially engaged as a daily waged beldar on muster-roll basis in the month of July, 1994 by the respondent at Sihunta Sub-Division and had worked continuously with 240 days in each calendar year upto 19.11.2000. His services were terminated/disengaged by the respondent *w.e.f.* 20.11.2000 after serving him notice on 17.10.2000. He was informed that as and when work and funds would be available, he would call back. The services of workmen as shown at serial Nos. 330, 360, 435, 467, 518, 531, 643, 691 and 692 in the Divisional Level seniority list were continuously retained, who all were junior to him. So, the respondent had violated the provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). Persons namely, S/Sh./Smt. Baldev Ram, Ramesh Kumar, Inder Singh, Biasa Devi, Hem Raj, Sodha Devi and Lata Devi were re-engaged by the respondent, being juniors to the petitioner. No opportunity was afforded to the petitioner for re-employment and as such the respondent had violated the provisions of Section 25-H of the Act. No retrenchment compensation was paid to him when his services were terminated. No notice of retrenchment in the prescribed manner had ever been served upon the appropriate Government. No prior approval of the Government had been obtained before terminating the services of the petitioner under Chapter VB of the Act. The action of the respondent was illegal and unjustified and in violation of the provisions of Section 25-F of the Act. After his illegal termination, the petitioner had moved an O.A. (D) No. 250/2001 before the Hon'ble H.P. Administrative Tribunal at Dharamshala, but on the point of jurisdiction the matter was dismissed as withdrawn. Many a times, requests had been made by the petitioner to the respondent to re-engage him on muster-roll basis, but without success. He had approached the concerned officers continuously till December, 2006, and had also filed written representations. In February, 2007, the petitioner alongwith the others had met the respondent in the office, when it was told that the department was not in a position to re-engage them on muster-roll basis. A demand notice as well as revised demand notice were served upon the respondent, when conciliation proceedings were carried out by the Conciliation-cum-Labour Officer, Chamba, which failed. A report was then sent to Labour Commissioner and the Labour Commissioner had made a reference to the Court. Before terminating the services of the petitioner, the overall seniority of all the daily waged workmen working under I&PH Division, Dalhousie had not been circulated. The principle of 'last come first go' had not been adhered to and no opportunity of re-employment had been afforded to the petitioner. Had his services not been terminated illegally, the petitioner would have completed eight years of continuous service with 240 days in each calendar year as on 31.12.2002 and would have become entitled for regularization *w.e.f.* 1.1.2003 under the regularization policy of the Government. From the date of his illegal termination, the petitioner is unemployed. The act and conduct of the respondent is illegal and unjustified. It is violative of the provisions Sections 25-F, 25-G, and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply wherein preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches, have been taken. The contents of the petition were denied on merits. However, it was admitted that the petitioner was engaged as a daily waged beldar in the year 1994. He had worked for 159 days in the year 1994, 329 days in the year 1995, 304 days in the year 1996, 365 days in the year 1997, 365 days in the year 1998, 365 days in the year 1999 and 324 days in the year 2000. It is asserted that due to shortage of funds and work in the Division, the respondent was facing huge financial constraints and as a large number of daily waged workers were engaged in the Division, it was impossible to adjust all of them. Due to the provision of less budget and availability of work, the services of the petitioner alongwith 363 other workmen were disengaged after complying with the provisions of Section 25 of the Act and by adhering to principle of 'last come first go' *w.e.f.* 19.11.2000. The provisions of Chapter VB of the Act were not attracted against the respondent. The respondent had served one month's notice and paid retrenchment

compensation to the petitioner in lieu of the services rendered by him. He had been paid the due compensation as provided under Section 25-F (b) of the Act. No juniors were allowed to work in the same Division, as such there was no violation of the Act. S/Shri Baldev, Ramesh, Inder Singh, Smt. Biasa Devi, Hem Raj, Smt. Sodha Devi and Smt. Lata Devi were engaged as per the orders of the Court or on the compassionate grounds. The petitioner was gainfully employed as an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 04.12.2017:

- (1) Whether termination of the services of the petitioner by the respondent *w.e.f.* 20-11.2000 is/was improper and unjustified as alleged? . . . *OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR.*
- (4) Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? . . . *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Shri Ravi Kumar appeared as PW1, who tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of retrenchment notice dated 17.10.2000 as Ex. PW1/B, copy of mandays chart as Ex. PW1/C, copy of seniority list of daily waged workers as Ex. PW1/D, copy of demand notice as Ex. PW1/E, copy of revised demand notice as Ex. PW1/F, copy of judgment dated 25.4.2016 as Ex. PW1/G and copy of order/judgment dated 23.10.2003 of Hon'ble HP Administrative Tribunal as Ex. PW1/H. The respondent examined one Shri Pritam Singh Dhanotia as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart of petitioner as Ex. RW1/B, copy of retrenchment notice as Ex. RW1/C, copy of receipt dated 17.10.2000 as Ex. RW1/D, copy of seniority list as Ex. RW1/E, copy of order dated 19.11.2001 as Ex. RW1/F, copy of OA (D) No.697/2000 as Ex. RW1/G, copy of OA (D) No.690/2000 as Ex. RW1/H, copy of letter dated 6.5.1996 as Ex. RW1/I, copy of letter dated 15.11.1997 as Ex. RW1/J, copy of letter dated 21.10.1998 as Ex. RW1/K, copy of mandays chart of Shri Brij Lal as Ex. RW1/L, copy of letter dated 11.11.1999 as Ex. RW1/M, copy of letter dated 27.4.2000 as Ex. RW1/N, copy of Award dated 1.10.2005 as Ex. RW1/O, copy of order in CWP No.1239/2005 as Ex. RW1/P and copy of order in CWP No.1240/2005 as Ex. RW1/Q.

7. Arguments of the Learned Authorized Representative for the petitioner and Learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1 : Yes

Issue No. 2 : Decided accordingly

<i>Issue No. 3</i>	: Decided accordingly
<i>Issue No. 4</i>	: No
<i>Relief.</i>	: Petition is partly allowed awarding lump-sum compensation of ₹1,50,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Ravi Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/H.

11. In the cross-examination, he stated that he was engaged as a daily waged beldar in I&PH Division Dalhousie in the year 1994. He admitted that a daily wager is appointed on the basis of muster-roll. He had worked with the respondent until the year, 2000. He feigned ignorance that after October/November, 2000 there was non-availability of work and funds in Dalhousie Division. He admitted that for these reasons like him 363 workers could not be kept at work in the Division. Volunteered that, the work continued on contract basis. He admitted that he alongwith other workers had been removed through notice. He denied that alongwith the notice compensation had also been paid to him. He also denied that the work is being got done by the department only through regular workers. Self stated that, new workers have also been engaged. He admitted that S/Smt. Sodha Devi and Lata Devi had been engaged on compassionate grounds. He was not aware that S/Sh. Baldev Ram, Ramesh Kumar, Inder Singh, Hem Raj and Smt. Biasa Devi had been re-engaged as per the orders of the Court. He specifically denied that after the year 2000 he had never approached the department for work. He admitted that he had raised a demand notice in the year 2007. He denied that no junior had been kept at work. He owns land, which he cultivates. He denied that by serving a notice and after payment of compensation, he had been removed. He also denied that he is not entitled for re-engagement.

12. Ex. PW1/B is the copy of letter dated 17.10.2000 regarding one month's notice of retrenchment under Section 25-F of the Act.

13. Ex. PW1/C is the copy of mandays chart relating to the petitioner.

14. Ex. PW1/D is the copy of seniority list of Beldar (daily waged) working under IPH Division Dalhousie upto 31.12.2001.

15. Ex. PW1/E is the copy of demand notice pertaining to the petitioner.

16. Ex. PW1/F is the copy of revised demand notice given by the petitioner to the respondent.

17. Ex. PW1/G is the copy of judgment dated 25.4.2016 passed in LPA No.49/2016 by the Hon'ble High Court of Himachal Pradesh.

18. Ex. PW1/H is the copy of order dated 23.10.2003 passed in OA (D) No. 250/2001 by the Hon'ble Administrative Tribunal.

19. Conversely, Shri Pritam Singh Dhanotia, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner had joined in July, 1994 on muster-roll. He denied that on 20.11.2000 the petitioner had been removed illegally. He admitted that before retrenching the petitioner alongwith 363 other workers no prior permission had been obtained from the Government. Volunteered that, they had been retrenched due to non-availability of work and funds. He specifically denied that no retrenchment compensation had been paid to the petitioner. He admitted that the name of the petitioner figures at serial No. 329 in the seniority list Ex. RW1/E. He denied that the department had not adhered to the principle of 'last come first go'. He clearly admitted that the workers mentioned at serial Nos. 330, 360, 435, 467, 518, 531, 643, 691 and 692 in the seniority list are all junior to the petitioner and they are still working in the department. Self stated that, some had been re-engaged as per the orders of the Court and some had been kept on compassionate grounds. He also admitted that S/Smt. Suno Devi, Sunita Devi, Madhu Devi, Sodha Devi and Lata Devi had been appointed on compassionate grounds. He further admitted that when the petitioner alongwith 363 other workers were retrenched, the above named persons were on the rolls of the department. Further, he admitted that no opportunity was given to the petitioner when his juniors were re-engaged. It was also admitted by him that the petitioner had never been charge-sheeted nor any inquiry was conducted against him. He denied that despite the availability of work and funds, the petitioner had been removed from work.

20. Ex. RW1/B is the copy of mandays chart relating to the petitioner, which corresponds to Ex. PW1/B.

21. Ex. RW1/C is the copy of one month's notice under Section 25-F of the Act served upon the petitioner by the respondent.

22. Ex. RW1/D is the copy of receipt relating to the petitioner.

23. Ex. RW1/E is the copy of seniority list of beldar (daily waged) working under I&PH Division, Dalhousie as it stood on 31.12.2000.

24. Ex. RW1/F is the copy of order dated 19.4.2001 passed in O.A. (D) No.692/2000 by the Hon'ble Administrative Tribunal.

25. Ex. RW1/G is the copy of order dated 19.4.2001 passed in O.A. (D) No.697/2000 by the Hon'ble Administrative Tribunal.

26. Ex. RW1/H is the copy of order dated 19.4.2001 passed in O.A. (D) No.690/2000 by the Hon'ble Administrative Tribunal.

27. Ex. RW1/I is the copy of letter dated 6.5.1996 regarding employment assistance to Smt. Suno Devi on compassionate grounds.

28. Ex. RW1/J is the copy of letter dated 15.11.1997 regarding employment assistance to Smt. Sunita Devi (Daily Wages) Beldar on compassionate grounds.

29. Ex. RW1/K is the copy of letter dated 26.10.1998 regarding employment assistance to Smt. Madhu Devi (Daily Wages) Beldar on compassionate grounds.

30. Ex. RW1/L is the copy of mandays chart relating to Shri Brij Lal s/o Shri Panjabo.

31. Ex. RW1/M is the copy of letter dated 11.11.1999 regarding employment assistance to Smt. Sodha Devi (Daily wages Clerk) on compassionate grounds.

32. Ex. RW1/N is the copy of letter dated 27.4.2000 regarding employment assistance to Smt. Lata Devi (Daily wages beldar) on compassionate grounds.

33. Ex. RW1/O is the copy of Award dated 1.10.2005 passed in Reference No.46/2000 by this Court.

34. Ex. RW1/P is the copy of judgment dated 27.8.2007 passed in CWP No.1239 of 2005 by the Hon'ble High Court of Himachal Pradesh.

35. Ex. RW1/Q is the copy of judgment dated 27.9.2007 passed in CWP No.1240 of 2005 by the Hon'ble High Court of Himachal Pradesh.

36. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. RW1/B produced by the respondent is not in dispute. A similar mandays chart has been placed and exhibited on record by the petitioner as Ex. PW1/C. The perusal of the mandays chart discloses that the services of the petitioner were initially engaged in the year 1994 by the respondent.

37. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 19.11.2000 (afternoon) after issuing the notice, copy of which is Ex. RW1/C. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged, being surplus, due to the non-availability of work and funds. As already mentioned, Ex. PW1/D is the seniority list of the daily waged beldars who remained on the rolls of the respondent up-to 31.12.2001. The name of the petitioner figures at serial No. 329 of the list.

38. It is the admitted case of the parties that S/Smt. Sodha Devi, Lata Devi and Suno Devi were appointed on compassionate grounds. A note in this regard has also been given on Ex. PW1/D. Anyhow, as per this seniority list of beldar (daily waged) working under I&PH Division Dalhousie, Smt. Sodha Devi was appointed by the respondent in November, 1999, whereas the services of Smt. Lata Devi were engaged in May, 2000, while Smt. Suno Devi was appointed in May, 1996. The dates of deaths of their husbands, namely, S/Shri Ashok Kumar, Tarbeej Singh and Tejo Ram have not come on the file. Admittedly, Smt. Sodha Devi, Smt. Suno Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. Shri Pritam Singh Dhanotia (RW1) in his substantive evidence categorically admitted that these juniors alongwith others are still working continuously with the department. The months of engagement of Smt. Sodha Devi, Smt. Lata Devi and Smt. Suno Devi are November, 1999, May, 2000 and May, 1996 respectively. At the cost of reiteration, I will like to add that the year of initial appointment of the petitioner as per Ex. RW1/B (also Ex. PW1/C) is 1994. There is nothing on the record to show that the deceased husbands of S/Smt. Sodha Devi, Lata Devi and Suno Devi were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

39. Not only this, Shri Pritam Singh Dhanotia (RW1) in his cross-examination admitted that workers at serial Nos. 330 (Shri Tilak Raj), 360 (Shri Brij Lal), 435 (Sh. Hem Raj), 518 (Smt.

Suniti), 531 (Smt. Madhu Devi) and 643 (Brij Lal s/o Shri Panjabo) are also junior to the petitioner and they are still working in the department.

40. There is no denial of the fact that Reference No. 55/2016 titled as Mohinder Singh versus The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P. was decided by this Court on 04.4.2019. While deciding the said reference, it was held by this Court that from May, 1996 upto May, 2000, new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent) then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

41. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

42. While testifying in the Court as PW1, the petitioner has given his age as 55 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

43. The Learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

44. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

45. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the

workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as *Deputy Executive Engineer vs. Kuberbhai Kanjibhai* 2019 (160) FLR 651, by relying upon the cases of *Bharat Sanchar Nigam Limited vs. Bhurumal* (2014) 7 SCC 177 and *District Development Officer & another vs. Satish Kantilal Amerelia* 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster-roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump-sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as *State of Uttarakhand & Anr. vs. Raj Kumar*, 2019 (160) FLR 791, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump-sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about seven years and actually worked for 2189 days as per mandays chart on record and that his services were disengaged on 19.11.2000, who had worked as non- skilled worker and had raised the industrial dispute by issuance of demand notice after about *seven years i.e.* demand notice was given the year 2007. Although, it was claimed by the petitioner that he time and again had approached the concerned officers continuously till December, 2006 for his re-engagement, but no representations have seen the light of the day. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 55 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump-sum compensation.

46. In view the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,50,000/- (Rupees one lakh fifty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are decided accordingly, while issue No.1 is answered in the affirmative and in favour of the petitioner.

Issue No. 3:

47. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the Learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondent.

Relief:

48. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹1,50,000/- (Rupees one lakh fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and

past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 36/2013
Date of Institution : 05-4-2013
Date of Decision : 27-05-2019

Shri Vipin Kumar s/o Shri Rachpal Singh, r/o VPO Diyoli, Tehsil Amb, District Una, H.P.
.. *Petitioner.*

Versus

The Managing Director, M/s Omid Engineering Pvt. Ltd. Village & P.O. Deoli, Tehsil Amb, District Una, H.P.
.. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR.
For the Respondent : Sh. N.L. Kaundal, AR

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Vipin Kumar s/o Sh. Rachpal Singh, VPO Diyoli, Tehsil Amb, Distt. Una, H.P. by the Managing Director, M/s Omid Engineering Pvt. Ltd., Village & P.O. Deoli, Tehsil Amb, Distt. Una, H.P. *vide* orders dated 14.01.2012 *w.e.f.* 16.01.2012 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to form the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially employed on daily wages (muster-roll) as a inspector quality control *w.e.f.* 5.10.2002 and had worked as such uptil the afternoon of 31.7.2007. On account of his good work, he was

appointment as a Junior Supervisor by the management at fixed salary of Rs. 2000/- per month *w.e.f.* 1.8.2007 and had continuously worked as such upto 15.1.2012. His services were illegally and unlawfully terminated on 16.1.2012. False and frivolous charges had been framed against him to the effect that he had taken a press reporter in the premises of the factory without the permission of the Incharge Supervisor and who had done the videography. On his request to SDM Amb, an inquiry was conducted and he was exonerated of the alleged charges. He was not taken back on duty. He had been placed under suspension *w.e.f.* 20.10.2011, with the direction to be present daily at the gate of the factory. No suspension allowance was ever paid to him. No inquiry was conducted against him for the alleged charges of videography in the factory. His termination was predetermined by the General Manager. The principle of natural justice had been violated and he was not afforded an opportunity to explain his position before the inquiry officer. He was a permanent workman of the company and without following the procedure, he had been fired from service. He is unemployed till date. No settlement took place before Labour Inspector, Amb. A report was then sent to Labour Commissioner, who in turn had made the reference to the Court. At the time of terminating of his services, the petitioner was drawing a salary of Rs. 5,800/- per month. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. The respondent filed a reply, whereby the contents of the statement of claim were denied in toto. It was asserted that the petitioner had not taking interest in his duties. He had orally warned many a times. But, however, the petitioner had not mend his ways. A warning letter has been issued to him for his dereliction his duties, as he had passed a leak cylinder. His explanation had even been called for not obeying the instructions of his seniors and had been slowing down the work. He had left the job and had been found guilty of the charges framed against him 30.10.2011. The petitioner had violated the rules and had allowed the entry of outsiders into the factory, without obtaining a permission. Many warning letters had been issued to him, but he had not been responded to them. He had been placed under suspension on 30.10.2011. An inquiry was conducted and due opportunity was afforded to the petitioner to cross-examine the witnesses and to lead his own evidence. On the basis of the inquiry report, the services of the petitioner had been terminated after giving him the benefits prescribed under the law. The petitioner was a merely helper and had been drawing a salary of Rs.3,300/- at the time of his service. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 13.8.2013:

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 16.01.2012 *vide* order dated 14.01.2012 is illegal and unjustified as alleged?
... *OPP.*
- (2) Whether the claim petition is not maintainable in the present form? ... *OPR.*

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Vipin Kumar examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondent examined one Shri Puran Singh s/o Shri Rasal Singh as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy inquiry report dated 10.1.2012 as Ex.RW1/B,

copy of letter dated 6.12.2011 as Ex.RW1/C, copy of letter dated 1.12.2011 as Ex.RW1/D, copy of letter dated 1.12.2011 as Ex.RW1/E, copy of letter dated 27.11.2011 as Ex. RW1/F and copy of letter dated 24.11.2011 as Ex.RW1/G. The respondent also examined one Shri Lakshman Prasad as RW2, who tendered his statement by way of affidavit Ex. RW2/A and placed on the file copy of letter dated 1.3.2008 as Ex.RW2/B, copy of letter dated 23.5.2008 as Ex.RW2/C, copy of letter dated 8.8.2009 as Ex.RW2/D, copy of letter dated 12.5.2010 as Ex.RW2/E, copy of letter dated 30.5.2009 as Ex.RW2/F, copy of full and final settlement as Ex.RW2/G, copy of letter dated 8.11.2011 as Ex.RW2/H, copy of postal receipt as Ex.RW2/I and copy of suspension letter dated 8.11.2011 as Ex.RW2/J. The also examined Shri Sarvjeet Singh as RW3, who also tendered his statement by way of affidavit Ex. RW3/A.

7. Arguments of the Learned Authorized Representatives for both the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

<i>Issue No.1</i>	: Yes
<i>Issue No.2</i>	: No
<i>Relief</i>	: Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Vipin Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he denied that on 14.1.2012 he had been informed by the General Manager about his dismissal and had also been asked to take his dues. He denied that he had refused to receive the letter Ex.R-A. He also denied that he had even refused to accept the registered letter Ex.RB. Volunteered that, he was not present at home when the registered letter had come. He admitted that before the inquiry a suspension letter Ex.RC was given to him. He then had moved an application Ex.R-D to the respondent. He admitted that inquiry was conducted against him by the respondent, wherein he had filed his reply Ex.RE. He also admitted that Shri P.S. Thakur was the Inquiry Officer. Self stated that he had not called him. He specifically admitted that as per the suspension letter, he had been directed to mark his presence at the factory gate till further orders. He clearly denied that in his presence statements of three witnesses were recorded by the Inquiry Officer. Further, he denied that after the inquiry, the charges were proved against him and report Ex.RF in this regard was prepared by the Inquiry Officer. He also denied that a copy of inquiry report had been given to him. It was specifically denied by him that during the inquiry due opportunity of being heard was given to him.

11. Conversely, Shri Puran Singh, General Manager, M/s Him Group of Industries Amb, Tehsil Amb, District Una, H.P. testified as RW1. He brought the entire record of the inquiry and proved the documents Ex.RW1/B to Ex.RW1/G.

In the cross-examination, he stated that he had only conducted the inquiry and had not prepared the day to day proceedings.

12. RW2 is Shri Lakshman Prasad Mourya (respondent). In his affidavit Ex. RW2/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed him. He filed certain documents purportedly in support of the reply, which are exhibited as Ex. RW2/B to Ex. RW2/J.

In the cross-examination, he stated that he had suspended the petitioner as per the rules and regulations of the company. He denied that no suspension allowance was ever paid to the petitioner. He admitted that as per letter Ex.Px-2, the petitioner had been promoted. He admitted that at the time of inquiry no presenting officer had been appointed by the management. A copy of the inquiry report had been given to him by the Inquiry Officer and on its basis the petitioner had been dismissed. He was not aware whether any show cause notice had been served upon the petitioner before his dismissal or not.

13. Shri Sarvajeet Singh (RW3) is also an employee of the respondent. He in his chief-examination, being in the shape of affidavit Ex. RW3/A supported the version of the respondent.

In the cross-examination, he admitted that he had filed Ex.RW3/A in the Court. Volunteered that, it was forcibly got written by Shri P.C.Thakur, General Manager of Him Cylinder Ltd. He also admitted that to enter the premises permission had been given by the General Manager of the factory to the Pradhan of Gram Panchayat Deoli and the press reporter.

14. Ex. RW1/B is the inquiry report relating to the petitioner.

15. Ex. RW1/C and Ex.RW1D are the copies of proceedings dated 6.12.2011 relating to Shri Dinesh Kumar, security guard.

16. Ex. RW1/E is the copy of letter No.HCL/SS/2011-12 dated 1st December, 2011 written by Shri P.S.Thakur, Inquiry Officer to Mr. Saravjeet Singh, Security Incharge.

17. Ex. RW1/F is the copy of inquiry proceeding dated 27.11.2011 relating to the petitioner.

18. Ex. RW1/G is the copy of letter No.HCL/VK/2011-12/340 dated 24th November, 2011 written by Shri P.S. Thakur, Inquiry Officer to Mr. Vipin Kumar (supervisor).

19. Ex. RW2/B is letter dated 1.3.2008 issued by the respondent to Shri Atul Kumar, Production Supervisor and the petitioner.

20. Ex.RW2/C is letter dated 23rd May, 2008 issued by Shri L.P. Mourya to Shri Atul Kumar and the petitioner.

21. Ex.RW2/D is letter dated 8.8.2009 issued by Shri L.P.Mourya, General Manager to the petitioner.

22. Ex.RW2/E is letter dated 12.5.2010 issued by Shri L.P.Mourya to the petitioner.

23. Ex.RW2/F is letter dated 30th May, 2009 issued by Shri L.P. Mourya to the petitioner.

24. Ex.RW2/G is copy of letter dated 17.1.2012 regarding full and final detail of the petitioner.

25. Ex.RW2/H is copy of letter dated 8.11.2011 regarding complaint against Shri Rajesh Kumar Pardhan Gram Panchayat, Deoli, Thesil Amb, District Una, H.P. and Shri Avinash Kumar the alleged press reporter of City Channel made by the General Manager of the respondent company to the Superintendent of Police, Una, District Una, H.P.

26. Ex.RW2/J is the copy of letter dated 8th November, 2011 written by the General Manager of the respondent to the petitioner.

27. Ex. Px/2 is the copy of letter dated 16.8.2007 issued by the General Manager of the respondent to the petitioner and the same was forwarded to the Director, HCL, Amb, Head Office.

28. It is the admitted case of the parties that the petitioner had been working as a Junior Supervisor since August, 2007 and had worked as such upto 16.1.2012. It was contended for the respondent that the petition is not maintainable, as a Supervisor cannot be termed to be a 'workman' under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). This cannot be accepted. Section 2(s) of the Act which defines the term 'workman' excludes only such person who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem. It was specifically pleaded in the statement of claim by the petitioner and so has also been spoken by him while stepping into witness box as PW1 that he had been drawing wages to the tune of Rs.5,800/- per month. Then, as per the own admitted document of the respondent, being a full and final detail of the petitioner, as on 17.1.2012, which is placed on the file as Ex.RW2/G, the rate of salary of the petitioner per month has been shown to be Rs.5,076/-. Therefore, the contention of the respondent that the petitioner was not a workman under the Act cannot be accepted and is accordingly negated.

29. Next, the version of the petitioner is that on 16.1.2012, his services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that there had been dereliction in duties on the part of the petitioner. An inquiry was held against the petitioner, in which he was found guilty. Only thereafter, his services were disengaged by the respondent as a measure of punishment *vide* order dated 14.1.2012, which is now under challenge.

30. The inquiry report on the basis of which action was taken against the petitioner has been exhibited on the file as Ex.RW1/B. The Inquiry Officer has been examined as a witness by the respondent as RW1. A glance at the copy of inquiry report, which is thereon the record, would reveal that the petitioner/delinquent was not afforded an opportunity to cross-examine the witnesses. No day to day proceedings of the inquiry have been exhibited on the file. RW1 Shri P.S. Thakur, the Inquiry Officer was categorical that he had only conducted the inquiry and had not prepared the day to day proceedings. No doubt, in the inquiry report it has been mentioned that despite being called, the petitioner/delinquent had not appeared, but in the absence of any day to day inquiry proceedings having been prepared in the case, the same cannot be accepted. No notice has been placed and exhibited on the file by the respondent, whereby the petitioner had been asked to appear on 6.12.2011, the date on which the witnesses were examined by the Inquiry Officer. Since, no opportunity was afforded to the petitioner to cross-examine the witnesses, it can be safely held that the inquiry had not been conducted as per the prescribed

procedure. Therefore, the action taken by the respondent on the basis of the inquiry report dated 10.1.2012 given by Shri P.S. Thakur, General Manager, Him Group of Industries, Amb, District Una is patently wrong and illegal.

31. From the evidence available on the file, it can be gathered that the petitioner served the respondent continuously for about five years and completed 240 days of work in each and every calendar year of his engagement. There is nothing on record to show that before the termination of the services of the petitioner, the provisions of Section 25-F of the Act were complied with by the respondent. As already mentioned, the punishment imposed upon the petitioner on the basis of inquiry report dated 10.1.2012 is not sustainable in the eyes of law, the inquiry itself is vitiated. The termination of the services of the petitioner by the respondent is, thus, illegal and unjustified.

32. While testifying in the Court as PW1, the petitioner has given his age as 35 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of service. Not only this, in the claim petition there is no whisper to the effect that after the disengagement of the services of the petitioner by the respondent he is having no means to earn. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For this reason, he is not entitled to the back wages.

33. Both the issues are decided in favour of the petitioner and against the respondent.

Relief:

34. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent per office order dated 14.1.2012 is set aside and quashed. The respondent is directed to re-instate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination, *except back wages*. However, it made clear that in case the respondent decides to proceed against the petitioner for dereliction of duty, this Award will not come in its way. In such a situation, the respondent will be entitled to proceed with the inquiry and take appropriate action against the petitioner as per law. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 164/2014
Date of Institution : 17-4-2014
Date of Decision : 27-5-2019

Smt. Rekha Devi w/o Shri Prem Chand, r/o Village Banoori, Tehsil Palampur, District Kangra, H.P. . .Petitioner.

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhayalya (CSKHPKV), Palampur, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Shri Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Rekha Devi w/o Sh. Prem Chand, Village Banoori, Tehsil Palampur, Distt. Kangra, H.P. by the Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that her services were engaged by the respondent as a daily waged worker on daily rated basis in Tea Husbandry department *w.e.f.* March, 1995 and she continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, her attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Tea Husbandry Department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to her by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to her at the time of her appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Tea Husbandry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow her and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against her. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 1995 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for

short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference no.207/2010. It was accepted by the President of the union and application no.25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, she had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During her services, the petitioner had worked under the control and supervision of the project investigator and she had only been making the payments to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla her attendance was marked by the Field Assistant of Tea Husbandry department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. As and when the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. She was engaged on work contract basis during April, 2003, for

which she has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. Her wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to her for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, her name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and her services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at her own will. She had worked on Individual Work Contractor/unregistered contractor basis from April, 2003 to January, 2009. She raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner herself had refused to work under the registered contractor during the year 2010. She only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, she had worked in other similar projects from time to time. She is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.8.2015:—

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was illegal and unjustified as alleged? . . . *OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . *OPP.*

- (3) Whether the claim petition is not maintainable in the present form? . . . *OPR.*
- (4) Whether the petitioner has no locus standi to file the case as alleged? . . . *OPR.*
- (5) Whether the petitioner has no cause of action to file the present case as alleged? . . . *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Rekha Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of letter dated 8.7.1998 as Ex. PW1/B, copy of notification dated 13.11.1998 as Ex. PW1/C, copy of office order dated 17.2.1999 as Ex. PW1/D, copy of notification dated 26.4.1999 as Ex. PW1/E, copy of letter dated 4.9.1986 as Ex. PW1/F, copy of statue of CSK as Ex. PW1/G, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J and seniority list as Ex. PW1/K. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of seniority list as Ex. RW1/D and Ex. RW1/E, copy of letter dated 8.7.1998 as Ex. RW1/F, copy of letter dated 17.02.1999 as Ex. RW1/G, copy of notification dated 26.4.1999 as Ex. RW1/H, copy of detail of petitioner as Ex. RW1/I, copies of contingent bill of payment receipts as Ex. RW1/J to Ex. RW1/Z140, copies of registration certificates as Ex. RW1/Z141 to Ex. RW1/Z145, copies of agreement deeds as Ex. RW1/Z146 to Ex. RW1/Z151.

7. Arguments of the Learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: No
<i>Issue No. 3</i>	: Yes
<i>Issue No. 4</i>	: Yes
<i>Issue No. 5</i>	: Yes
<i>Relief</i>	: Petition is dismissed per operative part of the Award

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Rekha Devi examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed certain documents purportedly in support of her claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, she admitted that her name was not sponsored by the Employment Exchange. She also admitted that she had not got any appointment letter from the university. She clearly admitted that seniority list is prepared only of daily wagers. She was categorical that her name does not figure in the seniority list, nor she had raised any objection in this regard. Further, she admitted that all the workers engaged on muster-roll by the university have been regularized as per the policy of the Government. She specifically denied that she had never been kept on muster-roll. She had to admit that she has not annexed any muster-roll with the petition. It was also admitted by her that she had worked in different projects of various departments of the university and that Ex. PW1/B to Ex. PW1/F give the description of the projects. These days she is working through the contractor. She clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. She denied that she had worked as a seasonal worker in various projects. She also denied that she had never worked as a daily paid worker and she had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

13. Ex. PW1/C is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/D is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

17. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

18. Ex. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by the Registrar, CSK, HPKV, Palampur.

21. Ex. PW1/K is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

22. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

23. Ex. PW2/B is the copy of Certificate of registration dated 27.7.2011.

24. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 1995. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, she was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 1995 upto the year 2010, the petitioner had worked for 240 days in every year and that her mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service written by the Deputy Registrar(Admn.), CSK, HPKV, Palampur.

27. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

28. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

29. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

30. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

31. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions which corresponds to Ex. PW1/B.

32. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

33. Ex. RW1/H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

34. Ex. RW1/I is the copy of working details of the petitioner.

35. Ex.RW1/J to Ex. RW1/Z are the copies of wages bills relating to the petitioner and others.

36. Ex.RW1/Z1 to Ex.RW1/Z138 are the copies of wages bills pertaining to the petitioner and others.

37. Ex.RW1/Z 139 is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

38. Ex.RW1/Z 140 is the copy of order dated 20.3.2014 passed by this Court in Reference No.207/2010.

39. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon her. It was also observed therein that where a person asserts that she was a workman of the company, and it is denied by the company, it is for her to prove the fact. It is not for the company to prove that she was not an employee of the company but of some other person.

40. In the case on hand, it was asserted by the petitioner that she was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked as an unregistered contractor and had raised the bills, payment of which had been made to her as a contractor for the work done. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between herself and the respondent. No document has been placed and exhibited on record by the petitioner to show that she was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/I. It shows that the petitioner had worked in the years 2003 to 2009 on work individual contract basis. Later, as per this document, she is shown to have worked for the years 2010 and 2011 through registered contractors. Then, the petitioner herself tendered in evidence a copy of seniority list as Ex. PW1/K of daily waged workers in the university, as it stood on 31.3.2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that her name does not find mention in the seniority list. No reason has been assigned by her as to why her name does not figure in the seniority list of daily paid workers maintained by the respondent. She clearly admitted that no objection was ever raised by her for her name being not there in the seniority list. No explanation is also forthcoming from her mouth as to why she did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner herself clearly admitted that she had worked in different projects of the various departments of the university and its detail is there in Ex. PW1/B to Ex. PW1/F. Had it been that the petitioner was a daily paid worker of the respondent, she ought to have been engaged on the muster-rolls. The petitioner in her substantive evidence clearly admitted that she had not filed any of her muster-rolls with the petition. This only goes to show that she had never been engaged on the muster roll. Further, the payment records Ex.RW1/J to Ex.RW1/Z138, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. She had signed these documents, being bills/contingent bills. Not only this, the petitioner very specifically stated in her cross-examination that these days she is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers.

Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/D, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that she was appointed or engaged as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that she was engaged as a daily paid worker by the respondent.

41. Next, it was claimed by the petitioner that she had worked continuously with the respondent from the year 1995 upto March, 2010, without any breaks. No such record has been seen in the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, her name ought to have figured in the seniority lists maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in her name. No muster roll has been filed by the petitioner, nor she had called for any such record so as to show that she in deed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that she had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on her part that as provided under Section 25-B of the Act, she had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that she had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that she had continuously worked for a period of 240 days in a calendar year, her submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only her own statement in her favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

42. In all fairness, the Learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the Learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

43. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that she had been appointed through a licensed/unlicensed contractor, so that she could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

44. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICAR US Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers , 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that she had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so she cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

45. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that she was engaged as a daily paid worker by the respondent. No muster-roll was prepared regarding her work, nor her name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that she had not challenged or objected to the seniority list, which did not show her name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, she is not entitled to any relief as claimed for by her. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5:

46. Taking in to account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief

47. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala (H.P.).

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 165/2014

Date of Institution : 17-4-2014

Date of Decision : 27-5-2019

Shri Pushpinder Kumar s/o Shri Bhagwan Dass, r/o VPO Kawari, Tehsil and District Kangra, H.P. .*Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Pushpinder Kumar s/o Sh. Bhagwan Dass, r/o VPO-Kawari, Tehsil & District Kangra, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Seed Production department *w.e.f.* March, 2007 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Seed Production department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Seed Production department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow to him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2007 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010.

During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference no.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent w.e.f. 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Seed Production department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days w.e.f. 22.1.2000 on contract basis and his services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance

Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. His name does not figure in the seniority lists of daily paid workers of the university. It was asserted that as the petitioner had never been engaged by the respondent, so the question of issuing appointment letter to him did not arise. The demands of union had not been considered by the respondent on the grounds that the services of the workers had not been engaged as daily paid labourers on muster roll basis. The respondent had never forced the petitioner to work under the M/s Sahayata Security Services. No record has been placed on the file by the petitioner in support his claim. The provisions of the Act are not attracted in this case as the petitioner was not engaged by the respondent university. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that his services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.8.2015:

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was illegal and unjustified as alleged? . . . *OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . *OPP.*
- (3) Whether the claim petition is not maintainable in the present form? . . . *OPR.*
- (4) Whether the petitioner has no locus standi to file the case as alleged? . . . *OPR.*
- (5) Whether the petitioner has no cause of action to file the present case as alleged? . . . *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Pushpinder Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 8.7.1998 as Ex.

PW1/B, copy of notification dated 13.11.1998 as Ex. PW1/C, copy of office order dated 17.2.1999 as Ex. PW1/D, copy of notification dated 26.4.1999 as Ex. PW1/E, copy of letter dated 4.9.1986 as Ex. PW1/F, copy of statue of CSK as Ex. PW1/G, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J and seniority list as Ex. PW1/K. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copy of seniority lists as Ex. RW1/D and Ex. RW1/E, copy of letter dated 8.7.1998 as Ex. RW1/F, copy of letter dated 17.2.1999 as Ex. RW1/G, copy of notification dated 26.4.1999 as Ex. RW1/H, copy of Award as Ex. RW1/I, copy of order dated 20.3.2014 as Ex. RW1/J, copy of registration certificates as Ex. RW1/K to Ex. RW1/O and copies of agreement deeds as Ex. RW1/P to Ex. RW1/U.

7. Arguments of the Learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: No
<i>Issue No. 3</i>	: Yes
<i>Issue No. 4</i>	: Yes
<i>Issue No. 5</i>	: Yes
<i>Relief</i>	: Petition is dismissed per operative part of the Award

REASONS FOR FINDINGS

Issues No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Pushpinder Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that he had not got any appointment letter from the university. He clearly admitted that seniority list is prepared only of daily wagers. He was categorical that his name does not figure in the seniority list, nor he had raised any objection in this regard. Further, he admitted that all the workers engaged on muster-roll by the university have been regularized as per the policy of the Government. He specifically denied that he had never been kept on muster-roll. He had to admit that he has not annexed any muster-roll with the petition. It was also admitted by him that he had worked in different projects of various departments of the university and that Ex. PW1/B to Ex. PW1/F give the description of the projects. These days he is working through the contractor. He clearly admitted that from March,

2010 onwards works were being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and he had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

13. Ex. PW1/C is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/D is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

17. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

18. Ex. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW1/K is the copy of seniority list of the daily waged workers in the CSK HPKV as it stood on 31.3.2008.

22. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

23. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

24. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2007. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2007 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

28. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

29. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

30. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

31. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions which corresponds to Ex. PW1/B.

32. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

33. Ex. RW1/H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

34. Ex. RW1/I is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

35. Ex. RW1/J is the copy of order dated 20.3.2014 passed in Reference No. 207/2010 by this Court.

36. Ex. RW1/K is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

37. Ex. RW1/L is the copy of certificate of registration dated 27.7.2011 which corresponds to Ex. PW2/B.

38. Ex. RW1/M is the copy of application for registration of establishments employing contract labour issued by Labour Officer-cum-Registering Officer, Dharamshala.

39. Ex. RW1/N is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

40. Ex. RW1/O is the copy of application for registration of establishments employing contract labour issued by the Labour Officer-cum-Registering Officer, Dharamshala.

41. Ex. RW1/P is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

42. Ex. RW1/Q is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

43. Ex. RW1/R is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

44. Ex. RW1/S is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. RW1/T is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. Ex. RW1/U is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

47. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

48. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had never been engaged by the university. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. He while under cross-examination was categorical that in case of a daily paid worker appointment letter is issued and that the university had not issued any appointment letter to him. Then, he tendered in evidence a copy of seniority list of daily waged workers in the university, as it stood on 31.3.2008, as Ex. PW1/K. A similar seniority list has also been placed and exhibited on record by the respondent as Ex. RW1/E. The name of the petitioner nowhere figures in this seniority list as a daily paid worker. Placed on record by the respondent is also the revised seniority list of daily paid workers as it stood on 31.3.2006, as Ex. RW1/D. The name of the petitioner also does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has

been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority lists. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university and its detail is there in Ex. PW1/B to Ex. PW1/F. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he has not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/D, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in March, 2007 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

49. Next, it was claimed by the petitioner that he had worked continuously with the respondent from March, 2007 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority lists maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Apex Court that the filing of an affidavit is only his own statement in his favour and it cannot be regarded as sufficient evidence for any Court or Tribunal to come to a conclusion that a workman had, infact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

50. In all fairness the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273***; ***State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HJL 2007 (HP) 903*** and ***Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. For the reasons recorded hereinabove, as the petitioner has failed to establish on record that he was

appointed as a daily paid worker on muster roll by the respondent, the petitioner cannot derive any advantage of what has been discussed in these cases.

51. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

52. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICAR US Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers , 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

53. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority lists of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority lists, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker and he is not entitled to any relief, as claimed for by him. Hence, both these issues are answered in the negative and decided against the petitioner.

Issues No. 3 to 5:

54. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and decided in favour of the respondent.

Relief

55. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to

the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 176/2013
Date of Institution : 30-9-2013
Date of Decision : 28-05-2019

Shri Janak Raj s/o Shri Uttam Chand, r/o VPO Kalruhi, Tehsil Amb, District Una, H.P.

..Petitioner.

Versus

1. The Employer/Factory Manager, M/s Him Cylinders Limited, Plot No. 1 to 4, Industrial Area Amb, District Una, H.P. (Present Office)

2. The Employer/Managing Director, M/s Him Cylinders, D-9, Udyog Nagar, Rohtak Road, New Delhi-110041 (Corporate Office) *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Singh Parmar, AR.
For the Respondent : Sh. N.L. Kaundal, AR

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Janak Raj, S/o Shri Uttam Chand, r/o V.P.O. Kalruhi, Tehsil Amb, District Una, H.P. *w.e.f.* 12-7-2012 by and Employer/Factory Manager, M/s Him Cylinders Limited, Plot No. 1 to 4, Industrial Area Amb, District Una, H.P. (Present Office), the Employer/Managing Director, M/s Him Cylinders, D-9, Udyog Nagar, Rohtak Road, New Delhi-110041 (Corporate Office), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a helper *w.e.f.* 28.9.1991 and he had continuously worked upto 12.7.2012, when his services are claimed to have been illegally terminated/dismissed in hire and fire. A charge-sheet

was served upon him on 31.5.2012 on false charges. The State Government had lodged a criminal case against General Manager of Him Cylinders who had called him by caste and he had been charge-sheeted and terminated in a revengeful manner. The charge-sheet was responded to by the petitioner but without he being informed the Inquiry Officer was appointed. No Presenting Officer had been appointed by the General Manager of the Factory. The petitioner had been asked by the Inquiry Officer to appear before him. His statement was recorded but its copy was not provided to him. In his absence no person had appeared as a witness to the charge-sheet against him and he was being not given an opportunity to cross-examine the witnesses. No show cause notice was issued nor any personal hearing was held before terminating his services. He was under suspension *w.e.f.* 23.5.2012 till further orders and had been asked to report for duty at the gate office daily which was against the spirit of the Standing Order Act, 1946. No money was ever paid to him *w.e.f.* 23.5.2012 till 12.7.2012. The main motive of the management particularly of the General Manager of the company, was to terminate his services by hook or crook. His dismissal was against the provisions of law. He had been victimized on account of trade union activities, he being the president of the workers union. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. A joint reply was filed by the respondents taking preliminary objections, regarding lack of maintainability and that the reference was bad in the eyes of law as the petitioner is still working in the company. The contents of the petition were denied on merits. It was asserted that the petitioner has been working as a helper since 1.1.2004. He had been instigating the workers to go on strike and to slow down the production. He had been disobeying the orders of the superiors. A show cause notice was given. Inquiry was conducted against the petitioner and he was found guilty. He was terminated from service. However, subsequently when good sense had prevailed upon the petitioner, he alongwith other co-workers had approached the management to give an opportunity to him as he had failed to file an appeal. After considering the request of the petitioner and that of co-worker, namely, Shri Mahinder Singh, the petitioner was allowed to work, ignoring his termination order. After considering his application, the management had issued a letter to the petitioner to report for duty. By taking a lenient view the management had allowed the petitioner to work in the company, being a last chance. True and material facts had been suppressed by the petitioner. The reply of the petitioner had been considered and he had been provided an opportunity to cross-examine the witnesses and to lead evidence. The termination order was revoked on written request/apology of the petitioner and he was permitted to work. The petitioner had joined his duties after the termination as per the law. Since the petitioner is still working in the company, the petition is not maintainable. The respondents, thus, pray for the dismissal of the claim petition.

4. Rejoinder was not filed by the petitioner.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 10.1.2014:

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 12.7.2012 is illegal and unjustified as alleged? . . .*OPP.*
- (2) Whether the claim petition is not maintainable in the present form? . . .*OPR.*
- (3) Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? . . .*OPR.*

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Janak Raj examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondent examined one Shri Puran Singh Thakur, as RW1, who tendered his statement by way of affidavit Ex. RW1/A and tendered in evidence copy of inquiry report dated 5.7.2012 as Ex.RW1/B and copy of letter dated 28.2.2013 as Ex.RW1/C.

7. Arguments of the learned Authorized Representatives for both the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: Yes
<i>Issue No. 3</i>	: Yes
<i>Relief</i>	: Petition is dismissed per operative part of the Award

REASONS FOR FINDINGS

Issue No. 1:

The petitioner, namely, Shri Janak Raj examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that he was appointed as a helper on 1.1.2004. He also admitted that charge-sheet dated 31.5.2012 (Ex.R3) bears his signatures. He had received it on 9.6.2012. He also admitted that letter dated 16.6.2012 (Ex.R4) was received by him on 17.6.2012, which bears his signatures. It was also admitted by him that letter dated 27.6.2012 (Ex.R5), which also bears his signatures, was received by him on 28.6.2012. He further admitted that letter dated 30.6.2012 also bears his signatures. He clearly admitted that on the basis of charge-sheet, inquiry was conducted by the company against him, in which he appeared. He was categorical that he knew about the application dated 20.2.2013 (Ex.R1), which he had written to the Director, wherein he had tendered an apology. He also admitted that he had been dismissed from service *vide* Ex.R2. He very specifically admitted that as per his written apology (Ex.R1), he was re-engaged by the respondents. It was also admitted by him that even today he is working with the respondents.

10. Conversely, Shri Puran Singh, General Manager, Him Cylinders Ltd., Plot No. 1 to 4, Industrial Area Amb, District Una, H.P. testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he admitted that he had charge-sheeted the petitioner. He also admitted that reply to the charge-sheet was filed by the petitioner. Inquiry was conducted against the petitioner and he had been suspended. Santosh Kumar, Accounts Officer was appointed as Inquiry Officer. He denied that no suspension allowance has been paid to the petitioner. Volunteered that, a cheque had been sent to him, which was received back. He specifically admitted that no presenting officer was appointed. It was also admitted by him that before his dismissal, no notice was given to the petitioner.

11. Ex.RW1/B is the copy of letter dated 5.7.2012 issued by the Inquiry Officer to the General Manager, M/s Him Cylinders Ltd, Amb, Una, H.P.

12. Ex.RW1/C is the copy of letter dated 28th February, 2013 issued by the General Manager, Him Cylinders Ltd. to the petitioner.

13. It is an admitted case of the parties that the services of the petitioner were engaged as a helper. The petitioner claimed that he had been working as a helper with the respondents since 28.9.1991. It was a stand taken by the respondents that the petitioner had been working as a helper since 1.1.2004. While under cross-examination the petitioner admitted this case of the respondents. He was categorical that he had been appointed as a helper on 1.1.2004.

14. The version of the petitioner is that on 12.7.2012 his services were wrongly and illegally terminated by the respondents. While denying the said fact, the respondents had pleaded that the petitioner was guilty of having disobeyed the orders of his superiors. An inquiry was held against the petitioner in which he was found guilty. Only thereafter, his services were disengaged as per order dated 12.7.2012, copy of which is Ex. R2. Moreover, the petitioner confessed his guilt and waived the right, if any, as per application dated 20.2.2013 (Ex.R1) and application (Ex.R6), where after by taking a lenient view he was asked to report for duty by 12.3.2013, it being a last chance with the condition that he would not indulge in such activities.

15. Even if the petitioner was not charge-sheeted and a proper inquiry was not conducted against him, the same will not come to his rescue in view of his act and conduct. The application/letter (Ex.R6) moved by the petitioner and the application/letter dated 20.2.2013 (Ex.R1) moved by the union on behalf of the petitioner, would go to show that the petitioner had admitted his fault in so many words.

16. As already mentioned, after culmination of the inquiry proceedings, the services of the petitioner were terminated by the respondents *vide* office order dated 12.7.2012, copy of which is Ex.R2. After the disengagement of the services of the petitioner, he himself had preferred an application (Ex.R6) and had also preferred an application (Ex.R1) through the union before Shri A.K. Agarwal, Director, Him Cylinders Ltd. Amb, District Una, H.P. In these applications, a request was made that the petitioner be pardoned for his wrongful act and re-engaged so that he could nurture his family, he being very poor. Pursuant to the application moved by the petitioner, the management of the respondents by taking a lenient view, through Sh. P.S. Thakur, General Manager of the respondents, had asked the petitioner to report for duty by 12.3.2013, if so desire and not to indulge in such activities in future. This offer of re-engagement was accepted by the petitioner without any protest and he as per his own admissions made in the cross-examination is still working with the respondents till date.

17. It is not the case of the petitioner that the application (Ex.R6) was preferred by him and the application (Ex.R1) was moved by him through the union under duress. Since, the petitioner himself admitted his guilt and on his tendering a written apology was pardoned by the respondents and again re-engaged, I am at a loss to understand as to how and on what basis it lies in his mouth to say that his services were wrongly and illegally terminated by the respondents. It is nowhere the case of the petitioner that at the time of the termination of his services, any person junior to him was retained in service by the respondents. It is also not his case that after his alleged illegal retrenchment, new/fresh hands had been engaged by the respondents. Further, it is not the version of the petitioner that he had completed 240 days of work in a block of twelve calendar months preceding the date of his termination *i.e.* 12.7.2012. The provisions of Section 25-F, 25-G and 25-H of the Act are not attracted in this case.

18. It appears to me that a totally false and baseless claim had been filed by the petitioner by twisting the facts. The claim petition preferred by him is belated and fallacious. He is not entitled to any relief.

19. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***State of Punjab through its Secretary Labour Punjab, Chandigarh and Anr. vs. Jaswant Singh & Anr., 2004(3) RSJ 422*** and ***Roop Kala vs. Headmaster, Government Primary School and Anr., 2015 (4) RSJ 251***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

20. Hence, this issue is decided against the petitioner and in favour of the respondents.

Issues No. 2 and 3:

21. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

22. Taking into account my findings on issue no.1 above, it is held that the petitioner has no cause of action. He is estopped from filing the claim petition by his act and conduct. The claim petition is not maintainable, as the petitioner has suppressed true and material facts from the Court. His act and conduct disentitles him from seeking indulgence of the Court.

23. Both these issues are decided against the petitioner and in favour of the respondents.

Relief

24. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ₹3,000/-. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 440/2015
Date of Institution : 29-10-2015
Date of Decision : 28-05-2019

Shri Chain Singh s/o Shri Kehru Ram, r/o Village Rakh, P.O. Sihunta, Sub Tehsil Sihunta, District Chamba, H.P. . .Petitioner.

Versus

The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent : Sh. S.S. Kaundal, Dy. D.A.
AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Chain Singh s/o Shri Kehru Ram, r/o Village Rakh, P.O. Sihunta, Sub Tehsil Sihunta, District Chamba, H.P. by the Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P. *w.e.f.* 01.12.2000 *vide* notice dated 25.10.2000 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged as a daily waged beldar in the year 1988 by the respondent in Sub Division Sihunta and had worked as such upto December, 1991. He could not complete 240 days in any calendar year and his services were again taken as a beldar in the year 1995 for a few days. He was then made to work as a complaint attendant-cum-work inspector, being a matriculate. From January, 1996 he had worked as such upto November, 2000. He had worked for more than 240 days in each calendar year during this period, without any breaks. He had worked for 290 days in the year 1996, 357 days in the year 1997, 322 days in the year 1998, 366 days in the year 1999 and 333 days in the year 2000 respectively. The scheme under which the petitioner was working was not seasonal, but perennial, being old scheme for the supply of drinking water to the villagers. Some workers were terminated after issuing one month's notice, without assigning any reason and in utter disregard to the principle of 'last come first go'. No prior permission had been obtained from the Government and no notice under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been served upon the workman. The services of the petitioner were terminated on 30.11.2000 without application of mind and juniors to him were retained. Many a times the petitioner had requested the department to re-engage him, but without success. A demand notice was served and conciliation proceedings were carried out, which failed. A report was submitted. Initially, the Labour Commissioner had refused to make a reference to the Court, but subsequently as per the directions of the Hon'ble High Court, a reference was made to the Court. New/fresh hands were also engaged by the respondent. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. However, it was owned that the petitioner was engaged as a daily rated Complaint Attendant *w.e.f.* February, 1996. He had worked for 290 days in the year 1996, 357 days in the year 1997, 322 days in the year 1998, 363 days in the year 1999 and 333 days in the year 2000. On account of shortage of work and funds in the Division, it was not possible for the respondent to adjust all the workers. On account of less budget and as the availability of work had decreased, the petitioner alongwith 363 other workmen was disengaged after complying with the provisions of Section 25 of the Act and by adhering to

principle of 'last come first go' *w.e.f.* 30.11.2000. The provisions of Chapter VB of the Act were not attracted against the respondent. The respondent had served one month's notice and paid retrenchment compensation to the petitioner in lieu of the services rendered by him. He had been paid the due compensation as provided under Section 25-F (b) of the Act. No juniors were allowed to work in the same Division, as such there was no violation of the Act. The petitioner is not entitled to any protection under the Act. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24.3.2017:

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* 01-12-2000 is/was improper and unjustified as alleged? ... *OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ... *OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ... *OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ... *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Chain Singh appeared as PW1, who tendered in evidence his statement by way of affidavit Ex. PW1/A, Shri Pritam Singh Dhanotia (respondent) as appeared RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of notice dated 25.10.2000 as Ex. RW1/B, copy of retrenchment compensation as Ex. RW1/C, copy of mandays chart as Ex. RW1/D, copy of seniority list of complaint attendant as Ex. RW1/E, copy of mandays chart of Shri Ranjeet Singh as Ex. RW1/F, copy of seniority list of beldar as Ex. RW1/G, copy of office order dated 8.1.2003 as Ex. RW1/H, copy of mandays chart of Shri Joginder Singh as Ex. RW1/I, copy of seniority list of pump operators as Ex. RW1/J, copy of seniority list of chowkidar as Ex. RW1/K, copy of seniority list of surveyor as Ex. RW1/L, copies of mandays chart of beldars as Ex. RW1/M1 to Ex. RW1/M9, copies of letters dated 8.5.2006, 20.5.2006, 4.12.2003, 29.11.2003, 6.12.2008 and 16.10.2000 respectively as Ex. RW1/N to Ex. RW1/S.

7. Arguments of the learned counsel for the petitioner and learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Decided accordingly.
Issue No.2	: Decided accordingly
Issue No.3	: Not pressed
Issue No.4	: No
Relief.	: Petition is partly allowed as per operative part of the Award.

REASONS FOR FINDINGS

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Chain Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

11. In the cross-examination, he denied that he was engaged as a complaint attendant on daily rate basis with the respondent in February, 1996. Volunteered that, he was kept at work in the year 1988. He admitted that his working detail given by the department is correct. Self stated that he had worked on different posts. He denied that the availability of budget and work in the department was reduced. He denied that due to these reasons, like him the services of 363 workmen were disengaged by the respondent after serving one month's notice and paying compensation. Self stated that, he had neither received the notice nor the compensation. He feigned ignorance whether the department had adhered to the principle of 'last come first go' or not. He was not aware that Shri Daljeet Singh and Shri Sarwan Kumar were senior to him. Self stated that they were kept at work after him. He admitted that he had worked with the department upto 30.11.2000. He denied that no junior had been kept at work. He had served the demand notice in the year 2007. He admitted that he had never worked after the year 2000. He denied that the workers had only been kept on compassionate grounds. He does days' drudgery presently. He denied that he has given a phoney statement.

12. Conversely, Shri Pritam Singh Dhanotia, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner had joined as a beldar in the year 1988 and had worked as such upto the year 1991. He further denied that the petitioner was also appointed as a beldar in the year 1995. He admitted that in Ex.RW1/B the petitioner has been shown to be holding the post of complaint attendant and that his date of joining has not been reflected. Volunteered that, no appointment letter had been issued. He admitted that Ex.RW1/D has been counter signed by him. Further, he admitted that in Ex.RW1/B the post of the petitioner has not been reflected. He also admitted that no postal receipts have been placed on record by the department. It was also admitted by him that Ex.RW1/B and Ex.RW1/C do not bear the signatures of the petitioner. He was categorical that as per Ex.RW1/E the petitioner had completed more than 240 days from the year 1996 upto the year 2000 and that he had regularly worked for five years. It was also admitted by him that no permission had been obtained from the Government while terminating the worker in the year 2000. He clearly admitted that the seniority list of work inspectors and complaint attendant is maintained at circle level. He further admitted that Shri Balak Ram is still working in the Chowari Division against the post of the petitioner as complaint attendant.

13. Ex.RW1/B is the copy of letter dated 25.10.2000 regarding one month's notice of retrenchment under Section 25-F of the Act served upon the petitioner by the respondent.

14. Ex. RW1/C is the copy of payment receipt relating to the petitioner.

15. Ex.RW1/D is the copy of mandays chart relating to the petitioner.

16. Ex. RW1/E is the copy of seniority list of complaint attendant (daily waged) working under IPH Division Dalhousie.

17. Ex. RW1/F is the copy of the extract of Divisional level seniority list in respect of IBC/Patwari category/post relating to Shri Ranjeet Singh as it stood on 31.12.2003.

18. Ex. RW1/G is the copy of the extract of Divisional level seniority list in respect of Beldar category/post relating to Shri Para Ram and others as it stood on 31.12.2003.

19. Ex. RW1/H is the copy of office order dated 8.1.2003 issued by the Executive Engineer, IPH Division Dalhousie.

20. Ex. RW1/I is the copy of extract of Divisional level seniority list relating to Shri Joginder Singh as it stood on 31.12.2003.

21. Ex. RW1/J is the copy of extract of Divisional level seniority list pertaining to Shri Satish Kumar and another.

22. Ex. RW1/K is the copy of extract of Divisional level seniority list pertaining to Shri Uttam Singh.

23. Ex. RW1/L is the copy of extract of Divisional level seniority list pertaining to Shri Rajeshwar Sharma.

24. Ex. RW1/M1 to Ex. RW1/M9 are the copies of extract of Divisional level seniority list relating to Shri Angrej Singh and others regarding various categories of posts.

25. Ex. RW1/N is the copy of letter dated 8.5.2006 regarding employment assistant to Sh. Pawan Singh as daily waged beldar in place of his father late Sh. Chand Ram daily waged beldar.

26. Ex. RW1/O is the copy of letter dated 20.5.2006 regarding employment assistant to Sh. Chaman Singh as daily waged beldar in place of his father late Sh. Changa Ram daily waged beldar.

27. Ex. RW1/P is the copy of letter dated 4.12.2003 regarding providing employment assistance to Shri Sanjay Kumar s/o late Shri Padhi Ram, daily waged beldar on compassionate grounds.

28. Ex. RW1/Q is the copy of letter dated 29th November, 2003 regarding providing employment assistance to Shri Sanjay Kumar s/o Shri Padhi Ram, daily waged beldar on compassionate grounds.

30. Ex. RW1/R is the copy of letter dated 6.12.2008 regarding employment assistance to Shri Deepak Kumar as daily waged beldar in place of his father late Sh. Girdhari Lal w.e.b. into regular mason.

31. Ex. RW1/S is the copy of letter dated 16.10.2000 regarding employment assistance to Sh. Om Prakash on compassionate grounds.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1988 and had worked as such till December, 1991. His services were again taken by the respondent as a beldar in the year 1995 and thereafter since

January, 1996 upto November, 2000 he had worked as a complaint attendant. The respondent has pleaded that the petitioner was appointed as a daily rated complaint attendant *w.e.f.* February, 1996. Although, the petitioner (PW1) in his cross-examination denied the fact that he had been engaged in the month of February, 1996 as a daily rated complaint attendant, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/D. It is not disputed by the petitioner. He while under cross-examination was categorical that a correct detail of his work has been given by the department. Its perusal discloses that the services of the petitioner were engaged by the respondent as a daily waged complaint attendant in the year 1996 for the first time and he had only worked as such upto 30.11.2000. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1988 as a daily waged beldar and had worked upto December, 1991 and further that he had again been engaged as a daily waged beldar in the year 1995, as claimed.

33. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 30.11.2000 (afternoon) after issuing the notice, copy of which is Ex. RW1/B. The version of the respondent is that the services of the petitioner and 363 workmen were disengaged, being surplus, due to the non-availability of work and funds. As already mentioned, Ex. RW1/E is the seniority list of the complaint attendant (daily waged) who remained on the rolls of the respondent up-to the year 2000. The name of the petitioner figures at last at serial No.8 of the list.

34. Admittedly, as per this seniority list all the other persons mentioned from serial Nos. 1 to 7 are senior to the petitioner. Shri Daljeet was appointed by the respondent on 1.1.1987, while the services of Shri Shiv Kumar were engaged on 1.1.1991, whereas Smt. Ramna Devi was appointed on 1.4.1991. Shri Narender was engaged on 1.6.1991, while the services of Smt. Sumna Kumari were engaged on 1.5.1994, that of Shri Krishan Lal on 1.7.1994 and Shri Balak Ram was appointed on 1.1.1996. At the cost of reiteration, I will like to add that the year of initial appointment of the petitioner as per Ex. RW1/E is 1st February, 1996. There is nothing on the record to show that the above named persons at serial Nos.1 to 7 in the seniority list of complaint attendant (daily waged) were junior to the petitioner. Ex. RW1/M8 is the seniority list of daily waged work inspector, who were being regularized. It shows that Shri Sarvejit Singh was initially engaged on 1.1.1994, while Shri Kartar Singh was appointed on 1.5.1994. So, both these workers are also senior to the petitioner. The other seniority lists placed on record by the respondent are either those of patwari category, belar category, cleaner category, water works clerk category, driver category, masons, pump operators and chowkidars. No seniority list of complaint attendant (daily waged), has been placed and exhibited on record by the petitioner to show that persons as complaint attendant junior to him had been retained in service by the respondent after his alleged termination. This indicates that no person junior to the petitioner as complaint attendant (daily waged) is still serving the respondent/department. The latter appears to have adhered to the principle of 'last come first go'. No doubt, Shri Pritam Singh Dhanotia (RW1) admitted while under cross-examination that Shri Balak Ram is still working in Chowari Division as a complaint attendant, but as discussed above said Shri Balak Ram is senior to the petitioner. So, there is nothing on record to show that any junior complaint attendant (daily waged) had been retained at the cost of senior, which would amount to unfair labour practice.

35. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment of complaint attendant to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other

employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

36. Such being the situation, I have no hesitation to conclude that the respondent had not contravened the provisions of Sections 25-G and 25-H of the Act.

37. Section 25-N of the Act provides for the procedure for retrenchment. The said Section reads:

"25N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"*
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.*
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.*
-*
- (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him....."*

37. Admittedly, no notice as provided under Section 25-N (a) of the Act was served upon the petitioner, nor any prior permission of the appropriate Government or such authority as

specified by the Government by a notification in the Official Gazette had been obtained by the respondent, as provided under Section 25-N (b) of the Act. Shri Pritam Singh Dhanotia (RW1) had to admit that when the workers were retrenched in the year 2000, no approval had been obtained from the State Government. So, it can be said that the services of the petitioner had been terminated without complying with the provisions of Section 25-N of the Act. Hence, the termination of the services of the petitioner is illegal and unjustified.

38. While testifying in the Court as PW1, the petitioner has given his age as 54 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he is doing the days' drudgery presently. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

39. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

40. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

41. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily

wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791***, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about five years and actually worked for 1665 days as per mandays chart on record and that his services were disengaged on 30.11.2000, who had worked as non- skilled worker and had raised the industrial dispute by issuance of demand notice after about ***seven years*** i.e. demand notice was given the year 2007. The petitioner on the date of filing the claim petition was aged 52 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

42. In view the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are decided accordingly, while issue no.4 is answered in the affirmative and in favour of the petitioner.

Issue No. 3:

43. Not pressed.

Relief

44. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 769/2016
Date of Institution : 19-11-2016
Date of Decision : 28-05-2019

Shri Suresh Kumar s/o Shri Girdhari Lal, r/o Village Kirthada, P.O. Baduhin, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, HPPWD, Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. S.S. Kaundal, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Sh. Suresh Kumar s/o Shri Girdhari Lal, r/o Village Kirthada, P.O. Baduhin, Tehsil Nurpur, Distt. Kangra, H.P. during the year 1990 by (1) the Executive Engineer, HPPWD Division Nurpur, Distt. Kangra, H.P. and (2) the Executive Engineer, HPPWD Division Jawali, Distt. Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 23 years *vide* demand notice dated nil received in the office of L.O. Kangra at Dharamshala on 4-3-2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not keeping in view delay of about 23 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1986 in HPPWD Sub Divisions-I and II and had worked as such till the year 1990, when his services were illegally terminated by the respondents. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No.3 of the petition. The mate of the petitioner was Shri Budhi Singh. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal

requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1986 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24.3.2018:

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ...*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ...*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ...*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Suresh Kumar examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19.8.1998 as Ex. PW1/B, copy of letter dated 18.12.1999 as Ex. PW1/C, copy of notice dated

4.5.2002 as Ex. PW1/D, copy of resolution dated 18.7.2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18.1.2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23.7.1994 as Ex. RW1/C, copy of office order dated 29.11.2010 as Ex. RW1/D, copy of letter dated 19.8.1998 as Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18.1.2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No.1</i>	: No
<i>Issue No.2</i>	: No
<i>Issue No.3</i>	: Yes
<i>Issue No.4</i>	: Not pressed/redundant
<i>Relief</i>	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Suresh Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/H.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No.PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1986 upto the year 1990. He denied that he had never worked for the period from the year 1986 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18.12.1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4.5.2002 regarding notice under Section 80 of CPC to The Secretary, HP Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18.1.2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29.11.2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23.7.1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29.11.2010 with regard to implementation of the award of this Court dated 22.12.2007.

26. Ex. RW1/E is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18.12.1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18.1.2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by respondent No.1 in the year 1986 and that he had worked as such upto the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1986 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1986 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Gian Chand (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those four years, the period for which he claims to have worked with respondent No.1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by

the respondents from the year 1986 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

36. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant, had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at ₹5,000/-. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 419/2016
Date of Institution : 27-6-2016
Date of Decision : 28-05-2019

Shri Rattan Chand s/o Shri Finu Ram, r/o Village Sanjoor, P.O. Kherian, Tehsil Nurpur, District Kangra, H.P. (Now through his legal heirs, namely, Karnail (son), Kamlesh Kumari, Reena Devi, Anju, Shahno Devi (daughters), Smt. Sito Devi (widow) ..Petitioners.

Versus

1. The Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, District Kangra, H.P.
2. The Executive Engineer, Jawali Division H.P.P.W.D., Jawali, District Kangra, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Nemo
For the Respondent(s) : Shri S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Rattan Chand s/o Shri Finu Ram, r/o Village Sanjoor, P.O. Kherian, Tehsil Nurpur, District Kangra, H.P. during October, 1999 by (i) the Executive Engineer, Nurpur Division, H.P.P.W.D. Nurpur, District Kangra, H.P., (ii) the Executive Engineer, Jawali Division H.P.P.W.D., Jawali, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute *vide* demand notice dated 26-11-2013 after lapse of 14 years. If not, keeping in view delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as beldar on daily wages in the month of September, 1989 in HPPWD Division Nurpur for the construction of Bodh-Chakki Dhar-Aund Haddal and Suliali to Dev Barari roads and at other sites adjoining to it. But, his services were disengaged orally in October, 1999. The petitioner had worked in the construction of roads to the villages and on national highway. He had worked with full zeal and devotion and there was no complaint against his work and conduct. He had completed 240 days in each calendar year. His disengagement was unfair, unjust, illegal, arbitrary, malafide and unconstitutional. After his termination, the petitioner had made several verbal requests to the respondents and every time he was given assurance that he would be re-engaged shortly. However, when he was not re-engaged for long, he had made written request to the department, but without success. A resolution on behalf of retrenched workmen had also been sent to Assistant Registrar, Hon'ble H.P. State Administrative Tribunal, Shimla, which is pending. Due to poverty and illiteracy, the petitioner could not pursue his case before the appropriate forum. Besides this, he had been requesting the officers of the department to

re-engage him, which was being put off on pretext or the other. A junior, named Smt. Kusam Lata is working with the respondent. The oral termination of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for short). Apart from this, the employer was also bound to follow the provisions of Sections 25-G and 25-H of the Act. Retaining of juniors and engaging fresh hands after the disengagement of the petitioner is violative of the provisions of Sections 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from September, 1989 to October, 1999. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurgur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of his visiting the offices also does not arise. The petitioner had never been terminated by the respondent. Since, he had never been engaged in HPPWD Divisions Nurgur and Jawali, the question of violation of the provisions of the Act does not arise. 24 workers had been engaged by the department as per the directions of the Court. The petitioner is gainfully employed as an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Be it recorded here that during the pendency of the petition Shri Rattan Chand, petitioner had expired and his legal representatives were brought on record as petitioners No. 1(a) to (f).

6. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 6.9.2018:

- (1) Whether termination of the service of deceased petitioner Rattan Chand by the respondents during October, 1999 is/was legal and justified as alleged? ...*OPP*.
- (2) If issue No.1 is proved in affirmative, to what service benefits the deceased petitioner is entitled to? ...*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ...*OPR*.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ... *OPR*.

Relief.

7. Arguments of the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: Negative
Issue No. 3	: Not pressed
Issue No. 4	: No
Relief	: Claim petition is dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 2:

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the deceased petitioner, namely, Shri Rattan Chand claiming that his services were illegally and unjustifiably terminated by the respondents in October, 1999 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the deceased petitioner had been engaged as a daily waged beldar in September, 1989 and had continuously worked as such till the year 1999. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondents had not adhered to the principle of 'last come first go', as persons junior to the deceased petitioner were retained. It was also asserted that no opportunity was afforded to the deceased petitioner for re-engagement. These averments were required to be established on record by the present petitioners by way of ocular and/or documentary evidence.

11. However, when the case was listed for evidence of the present petitioners for 27.5.2019, neither they nor their counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the present petitioners had remained *ex parte*.

12. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”

13. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

14. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a

Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.

15. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

16. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, they are unwilling to adduce evidence or argue their case.

17. In the instant case, neither the present petitioners nor their counsel has put in appearance before this Tribunal on 27.5.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

18. As per the reference, it was required of the present petitioners to plead and prove on record that the termination of the services of the deceased petitioner, namely, Rattan Chand in October, 1999 by the respondents was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the deceased petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof was led on record by the present petitioners. At the risk of repetition the present petitioners, being the legal heirs of the workman, had not put in appearance before this Tribunal. In this view of the matter, the present petitioners are not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioners and in favour of the respondents.

Issue No. 3:

19. Not pressed.

Issue No. 4:

20. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, it has been observed by the Hon’ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioners and against the respondents.

Relief

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 223/2016
Date of Institution : 16-4-2016
Date of Decision : 28-05-2019

Shri Raj Kumar s/o Shri Ghasita Ram, r/o VPO Aund, Tehsil Nurpur, District Kangra, H.P.
..Petitioner.

Versus

The Executive Engineer, Nurpur Division HPPWD, Nurpur, District Kangra, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo
For the Respondent : Shri S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Raj Kumar S/o Sh. Ghasita Ram R.O. V.P.O. Aund, Tehsil Nurpur, Distt. Kangra, H.P. *w.e.f.* 1-06-1988. by the Executive Engineer, HPPWD, Nurpur Division, Nurpur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis only for 28.5 days during the year 1988 and has raised his industrial dispute *vide* demand notice dated nil (received in the office of the Labour

Officer Kangra on 26-11-2013) after more than 25 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 25 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as beldar on daily wages in the month of March, 1986 in HPPWD Division Nurpur for the construction of Bodh- Chakki Dhar-Aund Haddal and Suliali to Dev Barari roads and at other sites adjoining to it. But, his services were disengaged orally in March, 1989. The petitioner had worked in the construction of roads to the villages and on national highway. He had worked with full zeal and devotion and there was no complaint against his work and conduct. He had completed 240 days in each calendar year. His disengagement was unfair, unjust, illegal, arbitrary, malafide and unconstitutional. After his termination, the petitioner had made several verbal requests to the respondent and every time he was given assurance that he would be re-engaged shortly. However, when he was not re-engaged for long, he had made written request to the department, but without success. A resolution on behalf of retrenched workmen had also been sent to Assistant Registrar, Hon'ble H.P. State Administrative Tribunal, Shimla, which is pending. Due to poverty and illiteracy, the petitioner could not pursue his case before the appropriate forum. Besides this, he had been requesting the officers of the department to re-engage him, which was being put off on pretext or the other. A junior, named Smt. Kusam Lata is working with the respondent. The oral termination of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for short). Apart from this, the employer was also bound to follow the provisions of Sections 25-G and 25-H of the Act. Retaining of juniors and engaging fresh hands after the disengagement of the petitioner is violative of the provisions of Sections 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. On merits, it is denied that the services of the petitioner had been engaged as beldar in March, 1986 in HPPWD Division, Nurpur. It is also denied that the services of the petitioner were terminated in the month of March, 1989. It is asserted that he was engaged as daily wager by HPPWD Sub Division Suliali in the month of March, 1988. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that the petitioner had completed 240 days in each calendar year. It is admitted that HPPWD Division Nurpur was involved in construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It was denied that juniors to the petitioner had been engaged by the respondent. It is asserted that no junior had been engaged nor retained in service by the respondent, so there was no violation of the provisions of the Act. Since, the petitioner had not fulfilled the criteria of Section 25-B of the Act, there was no need to serve a notice upon him as required under Section 25-F of the Act. The services of the petitioner had never been terminated by the respondent, rather he had left the work of his own sweet will. It is stated that only those workers were regularized by the respondent who had fulfilled the requisite criteria of regularization as per government policy. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 22.9.2017:

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* 01-06-1988 is/was illegal and unjustified as alleged? ...*OPP.*
- (2) If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to?
- (3) Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged? ...*OPR.*

Relief.

6. Arguments of the learned Deputy District Attorney for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: Negative
<i>Issue No. 3</i>	: Not pressed
<i>Issue No. 4</i>	: No
Relief	: Claim petition is dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 2:

8. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

9. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in March, 1989 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in March, 1986. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

10. However, when the case was listed for evidence of the petitioner for 27.5.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

11. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

12. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

13. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

14. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

15. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, they are unwilling to adduce evidence or argue their case.

16. In the instant case, neither the petitioner nor his counsel has put in appearance before this Tribunal on 27.5.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

17. Although, it is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar, but as per the reference it was required of the petitioner to plead and prove on record that the termination of his services in March, 1989 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a

mere saying on record, as no evidence in support thereof was led on record by the petitioner. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

18. Not pressed.

Issue No. 4:

19. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 187/2014
Date of Institution : 02-5-2014
Date of Decision : 29-5-2019

Shri Shiv Kumar s/o Shri Amar Nath, r/o Village Dhraman, P.O. Sungal, Tehsil Palampur, District Kangra, H.P. ..Petitioner.

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Shiv Kumar s/o Shri Amar Nath, r/o Village Dhraman, P.O. Sungal, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Fodder department *w.e.f.* July, 2000 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Fodder department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Fodder department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33- A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference

no. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference no. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Fodder department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during November, 2000, for which he has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were

paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor from November, 2000 to March, 2010. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:

- (1) Whether termination of services of the petitioner by the respondent w.e.f. March/April, 2010 is/was improper and unjustified as alleged? ...*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP.*

- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...*OPR.*
- (4) Whether the petitioner has no *locus standi* to file the case as alleged? ...*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ...*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ...*OPR.*
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ...*OPR.*
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ...*OPR.*
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ...*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Shiv Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/G, copy of award dated 30.6.2014 as Ex. RW1/H, copy of order dated 20.3.2014 as Ex. RW1/I, copy of letter dated 29.1.2011 as Ex. RW1/J, copy of certificate of registration as Ex. RW1/K, copy of license of M/s Sahayta Security as Ex. RW1/L, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/M, copy of contract license dated 16.7.2014 as Ex. RW1/N, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/O to Ex. RW1/T, copy of extract for I.D. Act Mark-X and copy of statutes of CSKHPKVV Palampur as Ex. RW1/U.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Decided accordingly
Issue No. 4	: Yes
Issue No. 5	: Not pressed
Issue No. 6	: Yes
Issue No. 7	: Yes
Issue No. 8	: Yes
Issue No. 9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Shiv Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-6 (now as Ex. RW1/D to Ex. RW1/I). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2000. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/G are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/H is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/I is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/J is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/K is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/L is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/M is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/N is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/O is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/P is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/Q is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/R is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/S is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/T is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/U is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been

paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/G. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D to Ex. RW1/G, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17.2.1999, copy of which is Ex.PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2000 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2000 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving

that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICAR US Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid

worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief

54. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 194/2014
Date of Institution : 03-5-2014
Date of Decision : 29-5-2019

Shri Ram Prasad s/o Shri Arjun Singh, r/o Village Bandbihar, P.O. Deogran, Tehsil Palampur, District Kangra, H.P. ..Petitioner.

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ram Prasad, s/o Shri Arjun Singh, r/o Village Bandbihar, P.O. Deogran, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Tea Husbandry department in the year 2004 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Tea Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Tea Husbandry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was

appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Tea Husbandry department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during January, 2009, for which he has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically

denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor only in the month of January, 2009. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ...*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...*OPR.*
- (4) Whether the petitioner has no *locus standi* to file the case as alleged? ...*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ...*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ...*OPR.*

- (7) Whether the petitioner has no cause of action to file the present case as alleged?
...*OPR.*
- (8) Whether the petitioner has not approached the Court with clean hands as alleged?
...*OPR.*
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged?
Relief. ...*OPR.*

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ram Prasad appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/F, copy of award dated 30.6.2014 as Ex. RW1/G, copy of order dated 20.3.2014 as Ex. RW1/H, copy of letter dated 29.1.2011 as Ex. RW1/I, copy of certificate of registration as Ex. RW1/J, copy of license of M/s Sahayta Security as Ex. RW1/K, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/L, copy of contract license dated 16.7.2014 as Ex. RW1/M, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/N to Ex. RW1/S, copy of extract for I.D. Act Mark-X and copy of statutes of CSKHPKVV Palampur as Ex. RW1/T.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Decided accordingly
Issue No. 4	: Yes
Issue No. 5	: Not pressed
Issue No. 6	: Yes
Issue No. 7	: Yes
Issue No. 8	: Yes
Issue No. 9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Ram Prasad examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-6 (now as Ex. RW1/D to Ex. RW1/I). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2004. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/F are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/G is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/H is the copy of order dated 20.3.2014 passed in Reference No. 207/2010 by this Court.

31. Ex. RW1/I is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/J is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/K is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/L is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/M is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/N is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/O is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/P is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/Q is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/R is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/S is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/T is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the

petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/F. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D to Ex. RW1/F, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex.PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2004 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2004 upto April, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on

record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. I C A R US Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues no. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT CHAMBA)**

Ref. No. : 07/2019
Date of Institution : 25-2-2019
Date of Decision : 14-05-2019

Shri Lohlu Ram s/o Shri Sala Ram, r/o Village Palani, P.O. Badagram, Tehsil Bharmaur,
District Chamba, H.P. *...Petitioner.*

Versus

The Executive Engineer, I&PH Division, Chamba, District Chamba, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. V.K. Gupta, Adv.
For the Respondent : Sh. S.S. Kaundal, Dy. D.A.

ORDER

The reference given below has been received from the appropriate Government for adjudication:

“Whether non regularization of the services of Shri Lohlu Ram s/o Shri Sala Ram, r/o Village Palani, P.O. Badagram, Tehsil Bharmaur, District Chamba, H.P. through General Secretary, District Committee, All India Trade Union Congress (AITUC) Head Office CHEP, Stage-II Karian P.O. Hardasura, Tehsil & District Chamba, H.P. as per the policy of the Government *w.e.f.* 01-01-2006 as per demand notice dated 11-04-2010 (copy enclosed) by the Executive Engineer, I.&P.H. Division Chamba, District Chamba, H.P. is legal and justified? If not, what amount of back wages, seniority, past consequential service benefits and compensation the above worker is entitled to from the above employer?”

2. The case is listed for the appearance of the petitioner for today but, however, Shri Lohlu Ram (petitioner) has made the below given statement in the Court today:—

“ब्यान किया कि मैंने जो दावा इस न्यायालय में दायर किया है उसे मैं न चलाना चाहता हूँ। दाखिल दफ्तर किया जावे।”

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 14th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 214/2014
Date of Institution : 05-5-2014
Date of Decision : 30-5-2019

Shri Sunil Kumar s/o Shri Dina Nath, r/o Vilalge Balla, P.O. Rakh, Tehsil Palampur, District Kangra, H.P. *...Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishavavidyalaya (CSKHPKV), Palampur, District Kangra, H.P. ...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sunil Kumar, s/o Shri Dina Nath, r/o Village Balla, P.O. Rakh, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits and compensation the above worker is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry department *w.e.f.* 4.6.2006 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agroforestry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to

join the duties in the rolls of the contractor subject to final disposal of reference no.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agroforestry department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during July, 2006, for which he has been raising bills for the work performed and had been paid at the rate not below

the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor from July, 2006 upto February, 2009. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? *...OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? *...OPP.*

3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...*OPR.*
4. Whether the petitioner has no *locus standi* to file the case as alleged? ...*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? ...*OPR.*
6. Whether the claim petition is not maintainable in the present form? ...*OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? ...*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? ...*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? ...*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sunil Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/F1, copy of award dated 30.6.2014 as Ex. RW1/G, copy of order dated 20.3.2014 as Ex. RW1/H, copy of letter dated 29.1.2011 as Ex. RW1/I, copy of certificate of registration as Ex. RW1/J, copy of license of M/s Sahayta Security as Ex. RW1/K, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/L, copy of contract license dated 16.7.2014 as Ex. RW1/M, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/N to Ex. RW1/S, copy of extract for I.D. Act Mark-X and copy of statutes of CSKHPKVV Palampur as Ex. RW1/T.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Decided accordingly
Issue No. 4	: Yes

<i>Issue No. 5</i>	: Not pressed
<i>Issue No. 6</i>	: Yes
<i>Issue No. 7</i>	: Yes
<i>Issue No. 8</i>	: Yes
<i>Issue No. 9</i>	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Sunil Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-4 (now as Ex. RW1/D to Ex. RW1/F1). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2006. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/F1 are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/G is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/H is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/I is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/J is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/K is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/L is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/M is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/N is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/O is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/P is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/Q is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/R is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/S is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/T is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the

Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex. R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/F1. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvvidyalaya, Palampur, which defines the term "employees", excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/D to Ex. RW1/F1, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17.2.1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2006 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICAR US Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal

employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue No.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking into account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 216/2014
Date of Institution : 05-5-2014
Date of Decision : 30-5-2019

Shri Rakesh Kumar s/o late Shri Surjan Dass, r/o Village Chatter, P.O. Andretta,
Tehsil Palampur, District Kangra, H.P. ...Petitioner.

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishavvidyalaya (CSKHPKV), Palampur, District Kangra, H.P. ...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Rakesh Kumar, s/o Late Shri Surjan Singh, r/o Village Chatter, P.O. Andretta, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvvidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Plant Breeding department *w.e.f.* October, 2005 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Plant Breeding department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Plant Breeding department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2005 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in

the rolls of the contractor subject to final disposal of reference no.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent w.e.f. 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Plant Breeding department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days w.e.f. 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during September, 2007, for which he had been raising bills for the work performed and had been paid at the rate not

below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor during September, 2007. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? *OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? *...OPP.*

3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...*OPR.*
4. Whether the petitioner has no *locus standi* to file the case as alleged? ...*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? ...*OPR.*
6. Whether the claim petition is not maintainable in the present form? ...*OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? ...*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? ...*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? ...*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Rakesh Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D & Ex. RW1/E, copy of award dated 30.6.2014 as Ex. RW1/F, copy of order dated 20.3.2014 as Ex. RW1/G, copy of letter dated 29.1.2011 as Ex. RW1/H, copy of certificate of registration as Ex. RW1/I, copy of license of M/s Sahayta Security as Ex. RW1/J, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/K, copy of contract license dated 16.7.2014 as Ex. RW1/L, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/M to Ex. RW1/R, copy of extract for I.D. Act Mark-X and copy of statutes of CSKHPKVV Palampur as Ex. RW1/S.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: No
<i>Issue No. 3</i>	: Decided accordingly
<i>Issue No. 4</i>	: Yes

<i>Issue No. 5</i>	: Not pressed
<i>Issue No. 6</i>	: Yes
<i>Issue No. 7</i>	: Yes
<i>Issue No. 8</i>	: Yes
<i>Issue No. 9</i>	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Rakesh Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 and Mark-RA-2 (now as Ex. RW1/D & Ex. RW1/E). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2005. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D and Ex. RW1/E are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/F is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/G is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/H is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/I is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/J is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/K is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/L is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/M is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/N is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/O is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/P is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/Q is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/R is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/S is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it

is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D and Ex. RW1/E. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D and Ex. RW1/E, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex.PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2005 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2005 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the

petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer Vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India Vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others Vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited Vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union Vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. Vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues no. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

RELIEF:

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 897/2016
Date of Institution : 24-12-2016
Date of Decision : 30-05-2019

Shri Prem Singh s/o Shri Duni Chand, r/o Village Khanni, Tehsil Nurpur, District Kangra,
H.P. ...Petitioner.

Versus

1. The Executive Engineer, HPPWD, Division, Nurpur, District Kangra, H.P.

2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.

...Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent(s) : Sh. S.S. Kaundal, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Sh. Prem Singh s/o Sh. Duni Chand, r/o V.P.O. Khanni, Tehsil Nurpur, Distt. Kangra, H.P. by the (1) Executive Engineer, H. P. P. W. D. Jawali, District Kangra, H.P., and (2) the Executive Engineer, HPPWD Nurpur, Distt. Kangra, H.P. during the year, 1990 to 13/6/2012 who had worked on daily wages as beldar and has raised his industrial dispute after more than 22 years *vide* demand notice dated nil received in the office of Labour Officer Kangra at Dharamshala on 13-06-2012, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1983 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1990. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No.3 of the petition. The mates of the petitioner were S/Shri Bazir Singh, Raghubir Singh, Mango Ram, Ashok Kumar. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent No.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his re-engagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1983 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24.3.2018:

1. Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ...*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP.*
3. Whether the claim petition is not maintainable in the present form? ...*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ...*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Prem Singh examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19.8.1998 as Ex. PW1/B, copy of letter dated 18.12.1999 as Ex. PW1/C, copy of notice dated 4.5.2002 as Ex. PW1/D, copy of resolution dated 18.7.2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18.1.2000. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23.7.1994 as Ex. RW1/C, copy of office order dated 29.11.2010 as Ex. RW1/D, copy of letter dated 19.8.1998 as Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18.1.2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: No
<i>Issue No. 3</i>	: Yes
<i>Issue No. 4</i>	: Not pressed/redundant
<i>Relief</i>	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Prem Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/H.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No.PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1983 upto the year 1990. He denied that he had never worked for the period from the year 1983 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18.12.1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4.5.2002 regarding notice under Section 80 of CPC to The Secretary, HP Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18.1.2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent no.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29.11.2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23.7.1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29.11.2010 with regard to implementation of the award of this Court dated 22.12.2007.

26. Ex. RW1/E is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18.12.1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18.1.2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub-Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub-Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by respondent No.1 in the year 1983 and that he had worked as such upto the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1983 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent no.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No.2 even for a single day from the year 1986 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in his pleadings, nor in his ocular evidence has stated the date on which he was engaged by respondent No.1. There is also no pleading or evidence to the effect as to on which specific date his services stood terminated by this respondent. Only the years of joining and termination of the petitioner stand specified in the statement of claim and his statement by way of affidavit Ex. PW1/A. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Gian Chand (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those seven years, the period for which he claims to have worked with respondent No.1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1983 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

33. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

34. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

35. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

36. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

37. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

38. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at `5,000/-. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 199/2014
Date of Institution : 03-5-2014
Date of Decision : 31-5-2019

Shri Ravi Kumar s/o Shri Sita Ram, r/o Village Maniyada, P.O. Thandol, Tehsil Palampur, District Kangra, H.P.*Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav aVidaylya (CSKHPKV), Palampur, District Kangra, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ravi Kumar, s/o Shri Sita Ram, r/o Village Maniyada, P.O. Thandol, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry and Organic Agriculture department *w.e.f.* April, 2002 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Fodder department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry and Organic Agriculture department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2002 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33- A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference no.207/2010. It was accepted by the President of the union and application no.25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security

Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent w.e.f. 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agroforestry & Organic Agriculture department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days w.e.f. 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during the year 2003, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to

the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university after March/April, 2010 at his own will. He had himself worked as a contractor prior to March, 2010. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner had concealed the true and material facts from the Court. The workmen had not come to attend their work at their own after March/September, 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ...*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...*OPR.*
4. Whether the petitioner has no *locus standi* to file the case as alleged? ...*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? ...*OPR.*
6. Whether the claim petition is not maintainable in the present form? ...*OPR.*

7. Whether the petitioner has no cause of action to file the present case as alleged?
...*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged?
...*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged?
...*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ravi Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/F, copy of award dated 30.6.2014 as Ex. RW1/G, copy of order dated 20.3.2014 as Ex. RW1/H, copy of letter dated 29.1.2011 as Ex. RW1/I, copy of certificate of registration as Ex. RW1/J, copy of license of M/s Sahayta Security as Ex. RW1/K, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/L, copy of contract license dated 16.7.2014 as Ex. RW1/M, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/N to Ex. RW1/S, copy of extract for I.D. Act Mark-X and copy of statutes of CSKHPKVV Palampur as Ex. RW1/T.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: No
<i>Issue No. 3</i>	: Decided accordingly
<i>Issue No. 4</i>	: Yes
<i>Issue No. 5</i>	: Not pressed
<i>Issue No. 6</i>	: Yes
<i>Issue No. 7</i>	: Yes
<i>Issue No. 8</i>	: Yes
<i>Issue No. 9</i>	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Ravi Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-5 (now as Ex. RW1/D to Ex. RW1/F). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2002. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/F are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/G is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/H is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/I is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/J is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/K is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/L is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/M is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/N is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/O is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/P is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/Q is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/R is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/S is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/T is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the

petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/F. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D to Ex. RW1/F, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex.PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2002 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2002 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on

record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer Vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India Vs. S. Satyam and Ors. 1996 SCC (L&S) 1273***; ***State of Himachal Pradesh and others Vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others Vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union Vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. Vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue No.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues no. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue no. 5:

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 182/2014
Date of Institution : 02-5-2014
Date of Decision : 31-5-2019

Shri Dharminder Singh s/o Shri Kanshi Ram, r/o Village Chowan, P.O. Dhupkirar,
Tehsil Palampur, District Kangra, H.P. *...Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi
Vishava Vidayalya (CSKHPKV), Palampur, District Kangra, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Dharminder Singh s/o Shri Kanshi Ram, r/o Village Chowan, P.O. Dhupkhar, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishva Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agriculture Engineering department *w.e.f.* August, 2001 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agriculture Engineering department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agriculture Engineering department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference no.207/2010. It was accepted by the President of the union and application no.25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract

of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agriculture Engineering department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during August, 2001, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek

work from the respondent university at his own will. He had worked on individual work contract basis *w.e.f.* December, 2007 upto 2008 and thereafter as an unregistered contractor *w.e.f.* May, 2008 to July, 2008 and for the month of August, 2009. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ...*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...*OPR.*
4. Whether the petitioner has no *locus standi* to file the case as alleged? ...*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? ...*OPR.*
6. Whether the claim petition is not maintainable in the present form? ...*OPR.*

7. Whether the petitioner has no cause of action to file the present case as alleged?
...*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged?
...*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged?
...*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Dharminder Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/F5, copy of award dated 30.6.2014 as Ex. RW1/G, copy of order dated 20.3.2014 as Ex. RW1/H, copy of letter dated 29.1.2011 as Ex. RW1/I, copy of certificate of registration as Ex. RW1/J, copy of license of M/s Sahayta Security as Ex. RW1/K, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/L, copy of contract license dated 16.7.2014 as Ex. RW1/M, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/N to Ex. RW1/S, copy of extract for I.D. Act Mark-X and copy of statutes of CSKHPKVV Palampur as Ex. RW1/T.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: No
<i>Issue No. 3</i>	: Decided accordingly
<i>Issue No. 4</i>	: Yes
<i>Issue No. 5</i>	: Not pressed
<i>Issue No. 6</i>	: Yes
<i>Issue No. 7</i>	: Yes
<i>Issue No. 8</i>	: Yes
<i>Issue No. 9</i>	: Yes
<i>Relief</i>	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Dharminder Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-5 (now as Ex. RW1/D to Ex. RW1/F5). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2001. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/F5 are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/G is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/H is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/I is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/J is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/K is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/L is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/M is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/N is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/O is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/P is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/Q is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/R is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/S is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/T is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been

paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/F5. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D to Ex. RW1/F5, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17.2.1999, copy of which is Ex.PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2001 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2001 upto April, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving

that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer Vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India Vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others Vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others Vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited Vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. Vs. Association of Engineering Workers , 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid

worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue No.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking into account my findings on issues no. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a mala fide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of May, 2019.

Sd/-
(YOGESH J ASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 502/2016
Date of Institution : 22-8-2016
Date of Decision : 31-05-2019

Shri Bhushan s/o Shri Mangat Ram, r/o Village and Post Office Jaunta, Tehsil Nurpur,
District Kangra, H.P.*Petitioner,*

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
 2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P.
-*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. S.S. Kaundal, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Bhushan s/o Shri Mangat Ram, r/o Village and Post Office Jaunta, Tehsil Nurpur, District Kangra, H.P. during year 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years *vide* demand notice dated-nil- received on 13.6.2011, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis *w.e.f.* 20.6.1986 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such till the year 1990. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No.3 of the petition. He had worked under various mates. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department *w.e.f.* 20.6.1986 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the

question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 07.10.2017:

1. Whether termination of the services of petitioner by the respondents during year, 1990 is/was improper and unjustified as alleged? ...*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*
4. Whether the claim petition is bad on the ground of delay and laches as alleged? ...*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Bhushan examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23.7.1994 as Ex. RW1/C, copy of office order dated 29.11.2010 as Ex. RW1/D, copy of letter dated 19.8.1998 as Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18.1.2000 as Ex. RW1/G and copy of mandays chart of the petitioner as Ex. RW1/H.

7. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: No
<i>Issue No. 3</i>	: Yes
<i>Issue No. 4</i>	: Not pressed/redundant
<i>Relief</i>	: Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Bhushan examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification no.PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1986 upto the year 1990. He denied that he had never worked for the period from the year 1986 upto the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

11. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

12. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

13. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29.11.2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

14. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

15. Ex. RW1/C is the copy of Office Order dated 23.7.1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

16. Ex. RW1/D is the copy of another Office Order dated 29.11.2010 with regard to implementation of the award of this Court dated 22.12.2007.

17. Ex. RW1/E is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

18. Ex. RW1/F is the copy of letter dated 18.12.1999 regarding representation of Smt. Kusum Lata.

19. Ex. RW1/G is the copy of letter dated 18.1.2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

20. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

21. The version of the petitioner is that his services were engaged as a daily waged beldar by respondent No.1 in the year 1986 and that he had worked as such upto the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1986 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No.2 even for a single day from the year 1986 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Gian Chand (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those five years, the period for which he claims to have worked with respondent no.1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1986 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

22. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

23. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

24. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

25. Taking in to account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

26. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

27. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at `5,000/-. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of May, 2019.

Sd/-
(YOGESH JASWAL)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

ब अदालत श्री कर्म सिंह कार्यकारी दण्डाधिकारी व नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी सैज,
उप-तहसील सैज, जिला कुल्लू, हि० प्र०

श्री दीप चन्द पुत्र श्री मंघरू राम, निवासी गांव बड़ेठा, डा० मझाण, उप-तहसील सैज, जिला कुल्लू
(हि० प्र०)

बनाम

आम जनता

विषय.—राजस्व रिकार्ड में नाम दर्ज करने बारे।

श्री दीप चन्द पुत्र श्री मंघरू राम, निवासी गांव बड़ेठा, डा0 मझाण, उप-तहसील सैज, जिला कुल्लू (हि0 प्र0) ने एक प्रार्थना-पत्र शपथ पत्र सहित इस अदालत में पेश किया है कि इसका नाम ग्राम पंचायत के परिवार रजिस्टर भाग-1 में दीप चन्द दर्ज है जबकि राजस्व रिकार्ड में इसका नाम दीप चन्द उर्फ दया राम पुत्र श्री मंघरू राम दर्ज है। अतः इसे दुरुस्त किया जाए।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी को इस बारे कोई एतराज हो तो दिनांक 04-03-2020 को अदालतन व वकालतन प्रातः 11.00 बजे हाजिर होकर अपना एतराज पेश कर सकता है। निर्धारित अवधि के पश्चात कोई उजर व एतराज प्राप्त न होने पर प्रार्थना-पत्र स्वीकार किया जाकर राजस्व रिकार्ड में इसका नाम दीप चन्द दर्ज करने के आदेश पारित किए जाएंगे।

आज दिनांक 04-02-2020 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—

सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी,
सैज, उप-तहसील सैज, जिला कुल्लू (हि0प्र0)।

ब अदालत श्री कर्म सिंह कार्यकारी दण्डाधिकारी व नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी सैज, उप-तहसील सैज, जिला कुल्लू, हि0 प्र0

अक्षिता नेगी पुत्री श्री लाल सिंह, निवासी गांव बाड़ीगाड़, डा0 ब्रैहिन, उप-तहसील सैज, जिला कुल्लू (हि0 प्र0)

बनाम

आम जनता

विषय.—भारत सरकार आयकर विभाग के रिकार्ड में पिता का नाम दुरुस्ती बारे।

अक्षिता नेगी पुत्री श्री लाल सिंह, निवासी गांव बाड़ीगाड़, डा0 ब्रैहिन, उप-तहसील सैज, जिला कुल्लू (हि0 प्र0) ने एक प्रार्थना-पत्र शपथ पत्र सहित इस अदालत में पेश किया है कि इसके पिता का नाम स्थाई लेखा खाता सं0 CABPN 9800J में भीम सेन दर्ज है जोकि गलत है। जबकि आधार नं0 6885 7107 2576 में व अन्य दस्तावेजों में इसके पिता का नाम लाल सिंह दर्ज है जोकि सही है। अतः इसे दुरुस्त किया जाए।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी को इस बारे कोई एतराज हो तो दिनांक 04-03-2020 को अदालतन व वकालतन प्रातः 11.00 बजे हाजिर होकर अपना एतराज पेश कर सकता है। निर्धारित अवधि के पश्चात कोई उजर व एतराज प्राप्त न होने पर प्रार्थना-पत्र स्वीकार किया जाकर भारत सरकार आयकर विभाग में इसके पिता का नाम भीम सेन के बजाए लाल सिंह दर्ज करने के आदेश पारित किए जाएंगे।

आज दिनांक 04-02-2020 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—

सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी,
सैज, उप-तहसील सैज, जिला कुल्लू (हि0प्र0)।

ब अदालत श्री कर्म सिंह कार्यकारी दण्डाधिकारी व नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी सैज, उप-तहसील सैज, जिला कुल्लू, हि0 प्र0

श्री टीकम राम पुत्र श्री भागीरथ, निवासी गांव सुचैहण, डा0 रोपा, उप-तहसील सैज, जिला कुल्लू, (हि0 प्र0)।

बनाम

आम जनता

विषय.—राजस्व रिकार्ड में नाम दर्ज करने बारे।

श्री टीकम राम पुत्र श्री भागीरथ, निवासी गांव सुचैहण, डा0 रोपा, उप-तहसील सैज, जिला कुल्लू, (हि0 प्र0) ने एक प्रार्थना-पत्र शपथ पत्र सहित इस अदालत में पेश किया है कि इसका नाम ग्राम पंचायत सुचैहण के परिवार रजिस्टर भाग-1 में टीकम राम पुत्र श्री भागीरथ दर्ज है जबकि राजस्व रिकार्ड महाल सुचैहण में इसका नाम डावे राम पुत्र दुनी चन्द दर्ज है। अतः इसे दुरुस्त किया जाए।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी को इस बारे कोई एतराज हो तो दिनांक 04-03-2020 को असालतन व वकालतन प्रातः 11.00 बजे हाजिर होकर अपना एतराज पेश कर सकता है। निर्धारित अवधि के पश्चात कोई उजर व एतराज प्राप्त न होने पर प्रार्थना-पत्र स्वीकार किया जाकर राजस्व रिकार्ड मुहाल सुचैहण में इसका नाम डावे राम पुत्र दुनी चन्द के बजाए डावे राम उर्फ टिकम राम पुत्र दुनी चन्द उर्फ भागीरथ दर्ज करने के आदेश पारित किए जाएंगे।

आज दिनांक 04-02-2020 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—

सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी,
सैज, उप-तहसील सैज, जिला कुल्लू (हि0प्र0)।

**ब अदालत कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार, भुन्तर,
जिला कुल्लू, हि0 प्र0**

केस नं0 : 05-MT/20

दायर तिथि : 09-12-2019

1. श्री जगत राम पुत्र श्री ओमी चन्द, निवासी गांव शिकारी, डा0 खोखन, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0

2. श्रीमती भोली पुत्री श्री छपे राम, निवासी गांव देहणीधार, डा0 नेऊली, तहसील व जिला कुल्लू

बनाम

सर्वसाधारण एवं आम जनता

विषय.—प्रार्थना-पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण ने दिनांक 09-12-2019 को इस अदालत में प्रार्थना-पत्र मय शपथ-पत्र पेश किया है कि उन्होंने दिनांक 30-10-2018 को शादी कर ली है और तब से दोनों पति-पत्नी के रूप में रहते चले आ रहे हैं। परन्तु प्रार्थीगण ने अपनी शादी का इन्द्राज सम्बन्धित ग्राम पंचायत भुलंग, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में दर्ज नहीं करवाया है।

अतः सर्वसाधारण व आम जनता को इस इशतहार द्वारा सूचित किया जाता है कि किसी भी व्यक्ति को उपरोक्त प्रार्थीगणों की शादी से सम्बन्धित ग्राम पंचायत के अभिलेख में दर्ज करने बारे कोई एतराज हो तो वह दिनांक 07-03-2020 को सुबह 10.00 बजे या इससे पूर्व असातन या वकालतन हाजिर अदालत पेश होकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार शादी दर्ज करने के आदेश सम्बन्धित पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 05-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

ब अदालत कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार, भुन्तर,
जिला कुल्लू, हि0 प्र0

केस नं0 : 06-MT/20

दायर तिथि : 17-01-2020

1. श्री गगनदीप सिंह पुत्र श्री दर्शन सिंह, निवासी मकान नं0 172 जी, प्रताप नगर पटियाला पंजाब, हाल निवासी गांव व डा0 भुन्तर, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0

2. श्रीमती परमिला देवी पुत्री श्री तरसेम लाल पुत्र श्री मैहंगा राम, निवासी गांव व डा0 भुन्तर, तहसील भुन्तर, जिला कुल्लू।

बनाम

सर्वसाधारण एवं आम जनता

विषय.—प्रार्थना-पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण ने दिनांक 17-01-2020 को इस अदालत में प्रार्थना-पत्र मय शपथ-पत्र पेश किये है कि उन्होंने दिनांक 02-12-2014 को शादी कर ली है और तब से दोनों पति पत्नी के रूप में रहते चले आ रहे हैं। परन्तु प्रार्थीगण ने अपनी शादी का इन्द्राज सम्बन्धित नगर पंचायत भुन्तर, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में दर्ज नहीं करवाया है।

अतः सर्वसाधारण व आम जनता को इस इशतहार द्वारा सूचित किया जाता है कि किसी भी व्यक्ति को उपरोक्त प्रार्थीगणों की शादी से सम्बन्धित नगर पंचायत के अभिलेख में दर्ज करने बारे कोई एतराज हो तो वह दिनांक 07-03-2020 को सुबह 10.00 बजे या इससे पूर्व असातन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार शादी दर्ज करने के आदेश सम्बन्धित पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 05-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

**ब अदालत कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार, भुन्तर,
जिला कुल्लू, हि0 प्र0**

केस नं0 : 07-MT/19

दायर तिथि : 16-01-2020

1. श्री ईश्वर दास पुत्र श्री डोला राम, निवासी गांव नरोगी, डा0 छैऊर, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0
2. श्रीमती सुषमा देवी पुत्री श्री मोरधन, निवासी गांव पियाशनी, डा0 पिपलागे, तहसील भुन्तर, जिला कुल्लू।

बनाम

सर्वसाधारण एवं आम जनता

विषय.—प्रार्थना-पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण ने दिनांक 16-01-2020 को इस अदालत में प्रार्थना-पत्र मय शपथ-पत्र पेश किये हैं कि उन्होंने दिनांक 05-05-2018 को शादी कर ली है और तब से दोनों पति पत्नी के रूप में रहते चले आ रहे हैं। परन्तु प्रार्थीगण ने अपनी शादी का इन्द्राज सम्बन्धित ग्राम पंचायत शिलीहार, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में दर्ज नहीं करवाया है।

अतः सर्वसाधारण व आम जनता को इस इशतहार द्वारा सूचित किया जाता है कि किसी भी व्यक्ति को उपरोक्त प्रार्थीगणों की शादी से सम्बन्धित ग्राम पंचायत के अभिलेख में दर्ज करने बारे कोई एतराज हो तो वह दिनांक 07-03-2020 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार शादी दर्ज करने के आदेश सम्बन्धित पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 07-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

**ब अदालत कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार, भुन्तर,
जिला कुल्लू, हि0 प्र0**

केस नं0 : 15-BT/2020

दायर तिथि : 12-11-2018

श्री राजु पुत्र श्री कालटु राम, गांव कोशुई, डा0 मौहल, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0

बनाम

सर्व साधारण एवं आम जनता

विषय.—प्रार्थना-पत्र अधिनियम धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

श्री राजु पुत्र श्री कालटु राम, गांव कोशुई, डा0 मौहल, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 ने इस कार्यालय में प्रार्थना-पत्र मय शपथ-पत्र दिया गया है कि उसके पुत्र रौनिक कुमार का जन्म दिनांक 24-02-2015 को स्थान गांव कोशुई, डा0 मौहल, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में हुआ है, परन्तु उसके जन्म की तिथि का इन्द्राज किसी कारणवश ग्राम पंचायत शिलीराजगिरी, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 के अभिलेख में दर्ज न किया है।

अतः इस इशतहार हजा द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को रौनिक कुमार पुत्र श्री राजु के जन्म तिथि दर्ज करवाने बारे कोई आपत्ति हो तो वह दिनांक 03-03-2020 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है, इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार जन्म तिथि दर्ज करवाने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 03-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

ब अदालत कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार, भुन्तर,
जिला कुल्लू, हि0 प्र0

केस नं0 : 16-BT/2020

दायर तिथि : 30-09-2019

श्री केहर सिंह पुत्र श्री डीणे राम, गांव ज्येष्ठा, डा0 ठेला, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0
बनाम

सर्व साधारण एवं आम जनता

विषय.—प्रार्थना-पत्र अधिनियम धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

श्री केहर सिंह पुत्र श्री डीणे राम, गांव ज्येष्ठा, डा0 ठेला, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 ने इस कार्यालय में प्रार्थना-पत्र मय शपथ-पत्र दिया गया है कि उसके पुत्र का जन्म दिनांक 24-05-2016 को स्थान गांव ज्येष्ठा, डा0 ठेला, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में हुआ है, परन्तु वह अपने पुत्र के जन्म की तिथि का इन्द्राज किसी कारणवश ग्राम पंचायत ज्येष्ठा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 के अभिलेख में दर्ज न किया है।

अतः इस इशतहार हजा द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को श्री योगराज पुत्र श्री केहर सिंह के जन्म तिथि दर्ज करवाने बारे कोई आपत्ति हो तो वह दिनांक 07-03-2020 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है, इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार जन्म तिथि दर्ज करवाने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 07-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

**ब अदालत कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार, भुन्तर,
जिला कुल्लू, हि0 प्र0**

केस नं0 : 17-BT/2020

दायर तिथि : 27-09-2019

श्रीमती गुड्डी देवी पुत्री श्री दीप चन्द हाल पत्नी श्री ओम नाथ, गांव दोगाधार, डा0 बजौरा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0

बनाम

सर्व साधारण एवं आम जनता

विषय.—प्रार्थना-पत्र अधिनियम धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

श्रीमती गुड्डी देवी पुत्री श्री दीप चन्द हाल पत्नी श्री ओम नाथ साकन, गांव दोगाधार, डा0 बजौरा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 ने इस कार्यालय में प्रार्थना-पत्र मय शपथ-पत्र दिया है कि उसका जन्म दिनांक 10-01-1981 को स्थान गांव दोगाधार, डा0 बजौरा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में हुआ है, परन्तु वह अपने जन्म की तिथि का इन्द्राज किसी कारणवश ग्राम पंचायत न्युल, तहसील भुन्तर, जिला कुल्लू हि0 प्र0 के अभिलेख में दर्ज न किया है।

अतः इस इशतहार हजा द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को श्रीमती गुड्डी देवी पुत्री श्री दीप चन्द हाल पत्नी श्री ओम नाथ के जन्म तिथि दर्ज करवाने बारे कोई आपत्ति हो तो वह दिनांक 07-03-2020 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है, इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार जन्म तिथि दर्ज करवाने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 05-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—

कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

**ब अदालत कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार, भुन्तर,
जिला कुल्लू, हि0 प्र0**

केस नं0 : 18-BT/2020

दायर तिथि : 24-01-2019

श्री मनजीत पुत्र श्री अशोक कुमार नाथ, गांव व डा0 गड़सा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0

बनाम

सर्व साधारण एवं आम जनता

विषय.—प्रार्थना-पत्र अधिनियम धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

श्री मनजीत पुत्र श्री अशोक कुमार साकन, गांव व डा0 गड़सा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 ने इस कार्यालय में प्रार्थना-पत्र मय शपथ-पत्र दिया है कि उसका जन्म दिनांक 10-07-1989 को स्थान गांव व डाकघर गड़सा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में हुआ है, परन्तु वह अपने जन्म की तिथि का

इन्द्राज किसी कारणवश ग्राम पंचायत गड़सा, तहसील भुन्तर, जिला कुल्लू हि0 प्र0 के अभिलेख में दर्ज न किया है।

अतः इस इशतहार हजा द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को श्री मनजीत पुत्र श्री अशोक कुमार के जन्म तिथि दर्ज करवाने बारे कोई आपत्ति हो तो वह दिनांक 07-03-2020 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है, इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार जन्म तिथि दर्ज करवाने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 05-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार,
भुन्तर, जिला कुल्लू, हि0 प्र0।

ब अदालत श्री कृष्ण चन्द यादव, सहायक समाहर्ता द्वितीय श्रेणी, तहसील कार्यालय पधर,
जिला मण्डी (हि0 प्र0)

उनवान मुकद्दमा : 13(3)

तारीख पेशी : 28-02-2020

वीरी सिंह उर्फ वीर सिंह पुत्र श्री रूप चन्द, गांव काम्पन, डाकघर सुधार, तहसील पधर, जिला मण्डी,
हि0प्र0 प्रार्थी।

बनाम

आम जनता

प्रत्यार्थी।

आवेदन-पत्र पंजीकरण जन्म जेर अधिनियम 13(3) जन्म एवं मृत्यु पंजीकरण, 1969.

हरगाह एतद्द्वारा सूचित किया जाता है कि आवेदक ने इस न्यायालय में एक आवेदन-पत्र दिया है कि उसका जन्म दिनांक 02-03-1979 को हुआ है जो दर्ज रजिस्टर जन्म एवं मृत्यु पंचायत सुधार में नहीं है जिसे दर्ज करने के आदेश दिये जावें। प्रतिवादी की तामील साधारण तौर पर की जानी संभव नहीं है। इसलिए अदालत को पूर्ण विश्वास हो चुका है कि प्रतिवादी आम जनता को तामील इशतहार राजपत्र के द्वारा ही किया जाना संभव है। अतः प्रतिवादी आम जनता को इस बजरिया इशतहार राजपत्र के द्वारा आगाह किया जाता है कि मिति 28-02-2020 को वरवक्त 10.00 बजे सुबह असालतन या वकालतन हाजिर अदालत आकर पैरवी मुकद्दमा करें, अन्यथा एकपक्षीय कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 05-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

कृष्ण चन्द यादव,
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील पधर, जिला मण्डी (हि0 प्र0)।

**ब अदालत श्री कृष्ण चन्द यादव, सहायक समाहर्ता द्वितीय श्रेणी, पधर, तहसील पधर,
जिला मण्डी (हि0 प्र0)**

उनवान मुकद्दमा : 37(2)

तारीख पेशी : 28-02-2020

शकुन्तला देवी पुत्री श्री तारा चन्द, गांव बाबली, डाकघर कुन्नु, तहसील पधर, जिला मण्डी, हि0 प्र0
प्रार्थिन ।

बनाम

आम जनता

प्रत्यार्थी ।

आवेदन-पत्र जेर धारा 37(2) के अन्तर्गत नाम दुरुस्त करने बारे ।

आवेदिका शकुन्तला देवी पुत्री श्री तारा चन्द, गांव बाबली, डाकघर कुन्नु, तहसील पधर, जिला मण्डी, हि0 प्र0 ने इस अदालत में पत्र गुजारा है कि उसका नाम ग्राम पंचायत वडीधार के रिकार्ड में नागो देवी दर्ज है। जोकि सही दर्ज हुआ है। जबकि महाल बाबली के तमाम भू-राजस्व रिकार्ड में उसका नाम शकुन्तला देवी दर्ज हुआ है जो गलत दर्ज है। आवेदिका ने इस कार्यालय में इस अदालत से प्रार्थना की है कि उसका नाम महाल बाबली के भू-राजस्व रिकार्ड में शकुन्तला देवी के स्थान पर शकुन्तला देवी उर्फ नागो दर्ज करने के आदेश दिये जावें।

अतः इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम दर्ज करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी 28-02-2020 को सुबह 10.00 बजे हाजिर होकर अपना उजर पेश कर सकता है। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 01-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

कृष्ण चन्द यादव,
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील पधर, जिला मण्डी (हि0 प्र0)।

**ब अदालत श्री कृष्ण चन्द यादव, सहायक समाहर्ता द्वितीय श्रेणी, तहसील कार्यालय पधर,
जिला मण्डी (हि0 प्र0)**

उनवान मुकद्दमा : 37(2)

तारीख पेशी : 28-02-2020

रोहित पुत्र स्व0 धर्म सिंह, निवासी लोहडा, डाकघर कुफरी, तहसील पधर, जिला मण्डी, हि0प्र0
प्रार्थी ।

बनाम

आम जनता

प्रत्यार्थी ।

आवेदन-पत्र जेर धारा 37(2) के अन्तर्गत नाम दुरुस्त करने बारा ।

आवेदक रोहित पुत्र स्व० धर्म सिंह, निवासी लोहडा, डाकघर कुफरी, तहसील पधर, जिला मण्डी, हि० प्र० ने इस अदालत में पत्र गुजारा है कि उसका नाम ग्राम पंचायत भडवाहन के रिकार्ड में रोहित दर्ज है जोकि सही दर्ज हुआ है जबकि महाल लोहडा के तमाम भू-राजस्व रिकार्ड में उसका नाम रोहित कुमार दर्ज हुआ है जोकि गलत है। आवेदक ने इस कार्यालय में इस अदालत से प्रार्थना की है कि उसका नाम महाल लोहडा के भू-राजस्व रिकार्ड में रोहित कुमार के स्थान पर रोहित दर्ज करने के आदेश दिये जावें।

अतः इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम दर्ज करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी 28-02-2020 को सुबह 10.00 बजे हाजिर होकर अपना उजर पेश कर सकता है। बसूरत गैरहाजिर एकतरफा कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 01-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

कृष्ण चन्द यादव,
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील पधर, जिला मण्डी (हि० प्र०)।

ब अदालत श्री कृष्ण चन्द यादव, सहायक समाहर्ता द्वितीय श्रेणी, तहसील कार्यालय पधर,
जिला मण्डी (हि० प्र०)

उनवान मुकद्दमा : 37(2)

तारीख पेशी : 28-02-2020

लक्ष्मी पत्नी स्व० श्री संगत, निवासी चकनवाडी, डाकघर पाली, तहसील पधर, जिला मण्डी, हि० प्र०
प्रार्थिया।

बनाम

आम जनता

प्रत्यार्थी।

आवेदन-पत्र जेर धारा 37(2) के अन्तर्गत नाम दुरुस्त करने बारा।

आवेदिका लक्ष्मी पत्नी स्व० श्री संगत, निवासी चकनवाडी, डाकघर पाली, तहसील पधर, जिला मण्डी, हि० प्र० ने इस अदालत में पत्र गुजारा है कि उसका नाम ग्राम पंचायत पाली के रिकार्ड में लक्ष्मी दर्ज है जोकि सही दर्ज हुआ है जबकि महाल पिपली के तमाम भू-राजस्व रिकार्ड में उसका नाम लच्छमी दर्ज हुआ है जोकि गलत है। आवेदिका ने इस कार्यालय में इस अदालत से प्रार्थना की है कि उसका नाम महाल पिपली के भू-राजस्व रिकार्ड में लच्छमी के स्थान पर लक्ष्मी दर्ज करने के आदेश दिये जावें।

अतः इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम दर्ज करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी 28-02-2020 को सुबह 10.00 बजे हाजिर होकर अपना उजर पेश कर सकता है। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 01-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

कृष्ण चन्द यादव,
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील पधर, जिला मण्डी (हि० प्र०)।

**ब अदालत श्री कृष्ण चन्द यादव, सहायक समाहर्ता द्वितीय श्रेणी, तहसील कार्यालय पधर,
जिला मण्डी (हि0 प्र0)**

उनवान मुकद्दमा : 37(2)

तारीख पेशी : 11-03-2020

तेज राम पुत्र स्व0 श्री टेक चन्द, निवासी सीह, डाकघर कुन्नु, तहसील पधर, जिला मण्डी, हि0प्र0
प्रार्थी।

बनाम

आम जनता

प्रत्यार्थी।

आवेदन-पत्र जेर धारा 37(2) के अन्तर्गत नाम दुरुस्त करने बारा।

आवेदक तेज राम पुत्र स्व0 टेक चन्द, निवासी सीह, डाकघर कुन्नु, तहसील पधर, जिला मण्डी, हि0प्र0 ने इस अदालत में प्रार्थना-पत्र गुजारा है कि उसका नाम ग्राम पंचायत कुन्नु के रिकार्ड में तेज राम दर्ज है जोकि सही दर्ज हुआ है जबकि महाल शिंगार के तमाम भू-राजस्व रिकार्ड में उसका नाम तेज सिंह दर्ज हुआ है जोकि गलत है। आवेदक ने इस कार्यालय में इस अदालत से प्रार्थना की है कि उसका नाम महाल शिंगार के भू-राजस्व रिकार्ड में तेज सिंह के स्थान पर तेज राम दर्ज करने के आदेश दिये जावें।

अतः इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम दर्ज करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी 11-03-2020 को सुबह 10.00 बजे हाजिर होकर अपना उजर पेश कर सकता है। बसूरत गैरहाजिर एकतरफा कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 04-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

कृष्ण चन्द यादव,
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील पधर, जिला मण्डी (हि0 प्र0)।

**ब अदालत श्री मनोज कुमार, सहायक समाहर्ता प्रथम श्रेणी, तहसील पधर,
जिला मण्डी (हि0 प्र0)**

उनवान मुकद्दमा : 37(2)

तारीख पेशी : 06-03-2020

इन्द्रा देवी पत्नी स्व0 श्री हरवंश, निवासी गांव व डाकघर पाली, तहसील पधर, जिला मण्डी, हि0 प्र0
प्रार्थिया।

बनाम

आम जनता

प्रत्यार्थी।

आवेदन-पत्र जेर धारा 37(2) के अन्तर्गत नाम दुरुस्त करने बारा।

आवेदिका इन्द्रा देवी पत्नी स्व0 श्री हरवंश, निवासी गांव व डाकघर पाली, तहसील पधर, जिला मण्डी, हि0 प्र0 ने इस अदालत में प्रार्थना-पत्र गुजारा है कि उसके मृत्क पति का नाम महाल पाली/591 के तमाम भू-राजस्व अभिलेख में रमेश चन्द दर्ज है जोकि गलत दर्ज हुआ है। जबकि उसके मृत्क पति का नाम ग्राम

पंचायत पाली रिकार्ड में हरवंश दर्ज है, जो सही दर्ज है तथा आवेदिका ने इस अदालत से प्रार्थना की है कि उसके मृतक पति का नाम रमेश चन्द के स्थान पर रमेश चन्द उर्फ हरवंश दर्ज करने के लिखित आदेश दिये जावें।

अतः इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम दर्ज करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी 06-03-2020 को सुबह 10.00 बजे हाजिर होकर अपना उजर पेश कर सकता है। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 04-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

मनोज कुमार,
सहायक समाहर्ता प्रथम श्रेणी,
तहसील पधर, जिला मण्डी (हि0 प्र0)।

ब अदालत श्री मनोज कुमार, सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी,
तहसील पधर, जिला मण्डी (हि0 प्र0)

मिसल नं0 : 02

तारीख मरजुआ : 28-01-2020

तारीख पेशी : 06-03-2020

अंजना कुमारी पुत्री देवी सिंह, निवासी खील, डाकघर कुफरी, तहसील पधर, जिला मण्डी, हि0प्र0
आवेदनकर्ता।

बनाम

आम जनता

प्रतिवादी।

आवेदन पत्र.—बाबत पंजीकरण जन्म जेर अधिनियम, 13(3) जन्म मृत्यु पंजीकरण, 1969.

हरगाह एतद्वारा यह सूचित किया जाता है कि आवेदिका ने इस न्यायालय में एक आवेदन-पत्र दिया है कि उसका नाम अंजना कुमारी पुत्री देवी सिंह का जन्म दिनांक 02-05-1980 को हुआ है जो दर्ज रजिस्टर जन्म मृत्यु पंचायत कुफरी में नहीं है जिसे दर्ज करने के आदेश दिये जावे। प्रतिवादी की तामील साधारण तौर पर की जानी संभव नहीं है। इसलिय अदालत को पूर्ण विश्वास हो चुका है कि प्रतिवादी आम जनता को तामील इशतहार राजपत्र के द्वारा ही किया जाना संभव है। अतः प्रतिवादी आम जनता को इस बजरिया इशतहार राजपत्र के द्वारा आगाह किया जाता है कि मिति 06-03-2020 को वरवक्त 10.00 बजे सुबह असालतन या वकालतन हाजिर अदालत आकर पैरवी मुकद्दमा करें, अन्यथा एकपक्षीय कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 06-02-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

मनोज कुमार,
कार्यकारी दण्डाधिकारी,
पधर, तहसील पधर, जिला मण्डी (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, तहसील औट, जिला मण्डी (हि0 प्र0)

उनवान मुकद्दमा : 13(3)

आगामी पेशी : 02-03-2020

श्रीमती कान्ता देवी पुत्री उदे राम, निवासी गांव सनसोई, डाकघर पनारसा, तहसील औट, जिला मण्डी (हि0 प्र0) प्रार्थिन।

बनाम

आम जनता

प्रतिवादी।

आवेदन-पत्र जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 की धारा 13 (3) के अन्तर्गत प्रार्थिन के पुत्र नैतिक का नाम व जन्म तिथि ग्राम पंचायत कोटाधार के रिकार्ड में दर्ज करने बारे।

प्रार्थिन श्रीमती कान्ता देवी पुत्री उदे राम, निवासी गांव सनसोई, डाकघर पनारसा, तहसील औट, जिला मण्डी (हि0 प्र0) ने इस अदालत में आवेदन-पत्र गुजारा है कि उसके पुत्र नैतिक का नाम व जन्म-तिथि अज्ञानतावश/अनजान होने के कारण ग्राम पंचायत कोटाधार के रिकार्ड में दर्ज नहीं हुई है। प्रार्थिन के पुत्र की जन्म तिथि 08-08-2014 है। प्रार्थिन ने इस अदालत से प्रार्थना की है कि उनके पुत्र का नाम व जन्म तिथि दर्ज करवाने हेतु सम्बन्धित पंचायत को लिखित आदेश पारित करने की कृपा करें।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त व्यक्ति का नाम व जन्म तिथि ग्राम पंचायत कोटाधार के रिकार्ड में दर्ज करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी 02-03-2020 को सुबह 10:00 बजे हाजिर होकर अपना उजर पेश कर सकता है बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिये जाएंगे।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
औट, जिला मण्डी (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, तहसील औट, जिला मण्डी (हि0 प्र0)

उनवान मुकद्दमा : 13(3)

आगामी पेशी : 02-03-2020

श्री भगत राम पुत्र वेद राम, निवासी गांव व डाकघर औट, तहसील औट, जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

प्रतिवादी।

आवेदन-पत्र जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 की धारा 13 (3) के अन्तर्गत प्रार्थी की पुत्री भारती वर्मा का नाम व जन्म तिथि ग्राम पंचायत औट के रिकार्ड में दर्ज करने बारे।

प्रार्थी श्री भगत राम पुत्र वेद राम, निवासी गांव व डाकघर औट, तहसील औट, जिला मण्डी (हि0 प्र0) ने इस अदालत में आवेदन-पत्र गुजारा है कि उनकी पुत्री भारती वर्मा का नाम व जन्म तिथि अज्ञानतावश/अनजान होने के कारण ग्राम पंचायत औट के रिकार्ड में दर्ज नहीं हुआ है। प्रार्थी की पुत्री की

जन्म तिथि 09-07-1983 है। प्रार्थी ने इस अदालत से प्रार्थना की है कि उनकी पुत्री का नाम व जन्म-तिथि दर्ज करवाने हेतु सम्बन्धित पंचायत को लिखित आदेश पारित करने की कृपा करें।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त व्यक्ति का नाम व जन्म तिथि ग्राम पंचायत औट के रिकार्ड में दर्ज करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी 02-03-2020 को सुबह 10:00 बजे हाजिर होकर अपना उजर पेश कर सकता है बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिये जाएंगे।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
औट, जिला मण्डी (हि0 प्र0)।

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar,
District Mandi (H. P.)**

In the matter of :

1. Ashwani Rathi s/o Sh. Naveen Rathi, r/o H. No. 24, Kota Dhar, P.O. Panarsa, Tehsil Aut, District Mandi (H.P.).

2. Anamika d/o Sh. Tek Chand, Vill. Maswari, P.O. Talyahar, Tehsil Sadar, District Mandi (H.P.) . . Applicants.

Versus

General Public

Subject.—Application for the registration of marriage under section 15 of Special Marriage Act, 1954.

Ashwani Rathi s/o Sh. Naveen Rathi, r/o H. No. 24, Kota Dhar, P.O. Panarsa, Tehsil Aut, District Mandi (H.P.) and Anamika d/o Sh. Tek Chand, Vill. Maswari, P.O. Talyahar, Tehsil Sadar, District Mandi (H.P.) (at present wife of Ashwani Rathi s/o Sh. Naveen Rathi, r/o H. No. 24, Kota Dhar, P.O. Panarsa, Tehsil Aut, District Mandi (H.P.) have filed an application alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 26-04-2019 according to Hindu rites and customs at Bipas Sadan Bhuli, Mandi, H.P. and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 27-02-2020. After that no objection will be entertained and marriage will be registered.

Issued today on 28th day of January, 2020 under my hand and seal of the court.

Seal.

Sd/-
Marriage Officer-cum-Sub-Divisional Magistrate,
Sadar, District Mandi (H.P.).

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसील बालीचौकी, जिला मण्डी (हि0प्र0)

मिसल नं० : 01-टी/12-02-2020

श्री रूप लाल पुत्र श्री ब्रेस्तु, निवासी गांव दारल, डाकखाना खोलानाल, तहसील बालीचौकी, जिला मण्डी (हि0 प्र0)

बनाम

आम जनता

विषय.— राजस्व रिकार्ड में नाम दुरुस्ती बारे आवेदन—पत्र।

श्री रूप लाल पुत्र श्री ब्रेस्तु, निवासी गांव दारल, डाकखाना खोलानाल, तहसील बालीचौकी, जिला मण्डी (हि0 प्र0) ने एक आवेदन—पत्र मय शपथ—पत्र इस आशय के साथ गुजारा है कि उसका नाम ग्राम पंचायत नलवागी के रिकार्ड में रूप लाल दर्ज है, जो उसका सही नाम है। परन्तु राजस्व रिकार्ड में गलती से रूप चन्द दर्ज हुआ है। अब राजस्व रिकार्ड में रूप लाल दर्ज करवाना चाहता है।

अतः इस इशतहार द्वारा सर्वसाधारण जनता व हितबद्ध व्यक्तियों को सूचित किया जाता है कि उक्त नाम को दुरुस्त करने बारे किसी भी व्यक्ति को कोई आपत्ति हो तो वह दिनांक 28-02-2020 को या इससे पूर्व अधोहस्ताक्षरी के समक्ष असालतन या वकालतन उपस्थित हो कर अपनी आपत्ति दर्ज कर सकता है। इसके उपरान्त कोई भी एतराज काबिले समायत नहीं होगा तथा आवेदन—पत्र पर नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक 30-01-2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
तहसील बालीचौकी, जिला मण्डी (हि0 प्र0)।

**ब अदालत तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी, तहसील सन्धोल,
जिला मण्डी (हि0 प्र0)**

मिसल मृत्यु पंजीकरण नम्बर : 02

तारीख दायर : 01-02-2020

तारीख पेशी : 02-03-2020

श्रीमती सूरजू देवी पत्नी श्री सन्तू, निवासी गांव खुड्डी, डाकघर व तहसील सन्धोल, जिला मण्डी (हि0 प्र0) प्रार्थिन।

बनाम

आम जनता

प्रत्यार्थी।

जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत आवेदन—पत्र।

श्रीमती सूरजू देवी पत्नी श्री सन्तू, निवासी गांव खुड्डी, डाकघर व तहसील सन्धोल, जिला मण्डी (हि0 प्र0) के आवेदन—पत्र पर कार्यवाही करने के उपरान्त अति० जिला रजिस्ट्रार (जन्म एवं मृत्यु) एवं

चिकित्सा स्वास्थ्य अधिकारी, मण्डी, जिला मण्डी से उनके कार्यालय के पत्र संख्या HFW-MND (Delayed Birth & Death)/2020-738, दिनांक 18-01-2020 द्वारा श्रीमती राधू का विलम्बित मृत्यु पंजीकरण मामला समस्त औपचारिकताओं सहित इस कार्यालय में प्राप्त हुआ है जिसमें उनके द्वारा श्रीमती राधू पत्नी श्री लोहका, निवासी गांव खुड्डी, डाकघर व तहसील सन्धोल, जिला मण्डी (हि० प्र०) की मृत्यु दिनांक 30-04-1983 को होने की पुष्टि करते हुए जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 व हि० प्र० जन्म एवं मृत्यु पंजीकरण अधिनियम, 1978 के तहत अनुमति प्रदान करते हुए निर्देश दिये हैं कि मामला में उक्त अधिनियम में निहित शर्तों के अनुसार समस्त औपचारिकताओं को पूरा करने के पश्चात् ही सम्बन्धित ईकाई (ग्राम पंचायत सन्धोल) को परिवार रजिस्टर व जन्म एवं मृत्यु पंजीकरण रजिस्टर में नाम एवं मृत्यु तिथि की प्रविष्टि करने हेतु भेजा जाए।

अतः इससे पूर्व कि मामला में आगामी आवश्यक कार्रवाई अमल में लाई जाए, इस नोटिस द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी को उपरोक्त मामला में कोई एतराज हो तो वह इस न्यायालय में दिनांक 02-03-2020 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर आकर अपना उजर/एतराज पेश कर सकता है अन्यथा गैर-हाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी

आज दिनांक 03 फरवरी, 2020 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
सन्धोल, जिला मण्डी, हि० प्र०।

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar,
District Mandi, H. P.**

In the matter of :—

1. Narender Kumar s/o Shri Khem Chand, r/o Village Dhanyari, P.O. Bari Gumanu, Tehsil Sadar, District Hamirpur, H.P.

2. Pinki Devi d/o Shri Bhagat Ram, r/o Village Pinderta, P.O. Tikkri, Tehsil Bhoranj, District Mandi, H.P.
.. Applicants.

Versus

General Public

Subject.—Application for the registration of Marriage under Section 15 of Special Marriage Act, 1954.

Narender Kumar s/o Shri Khem Chand, r/o Village Dhanyari, P.O. Bari Gumanu, Tehsil Sadar, District Mandi, H.P. and Pinki Devi d/o Shri Bhagat Ram, r/o Village Pinderta, P.O. Tikkri, Tehsil Bhoranj, District Hamirpur, H.P. (At present wife of Narender Kumar s/o Shri Khem Chand, r/o Village Dhanyari, P.O. Bari Gumanu, Tehsil Sadar, District Mandi, H.P. have filed an application along with affidavits in the court of undersigned under Section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 10-02-2019 according to Hindu rites and customs at their respective houses and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this

court on or before 27-02-2020, after that no objection will be entertained and marriage will be registered.

Issued today on 28th day of January, 2020 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Sadar, District Mandi (H.P.).*

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar,
District Mandi, H. P.**

In the matter of :—

1. Yashodhan Lal s/o Shri Bal Krishan, V. P.O. Talyahar, Tehsil Sadar, District Mandi, H.P.

2. Raj Sharma d/o Shri Ganga Ram, r/o Samkheter Muhalla Mandi Town, Tehsil Sadar, District Mandi, H.P. . . Applicants.

Versus

General Public

Subject.—Application for the registration of Marriage under Section 15 of Special Marriage Act, 1954.

Yashodhan Lal s/o Shri Bal Krishan, V. P.O. Talyahar, Tehsil Sadar, District Mandi, H.P. and Raj Sharma d/o Shri Ganga Ram, r/o Samkheter Muhalla Mandi Town, Tehsil Sadar, District Mandi, H.P. (At present wife of Yashodhan Lal s/o Shri Bal Krishan, V. P.O. Talyahar, Tehsil Sadar, District Mandi, H.P. have filed an application alongwith affidavits in the court of undersigned under Section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 11-12-1975 according to Hindu rites and customs at their respective houses and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 27-02-2020 after that no objection will be entertained and marriage will be registered.

Issued today on 28th day of January, 2020 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Sadar, District Mandi (H.P.).*

In the Court of Sh. Amil Kumar Bhardwaj (H.P.A.S.), Marriage Officer-cum-Sub-Divisional Magistrate, Chachyot at Gohar, District Mandi, H. P.

In the matter of :—

1. Sh. Bal Krishan Rathour s/o Sh. Karam Singh, V. P.O. Saroa, Tehsil Chachyot, District Mandi, H.P.
2. Smt. Sapna Devi d/o Sh. Krishan Lal, r/o Bakhali, P.O. Saroa, Tehsil Chachyot, District Mandi, H.P. . . Applicants.

Versus

General Public

Subject.— Proclamation for the registration of Marriage under section 15 of Special Marriage Act, 1954.

Sh. Bal Krishan Rathour and Smt. Sapna Devi have filed an application on 29-01-2020 alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 16-01-2020 and they are living as husband and wife since then and hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 02-03-2020. The objection received after 02-03-2020 will not be entertained and marriage will be registered accordingly.

Issued today on 29-01-2020 under my hand and seal of the court.

Seal.

Sd/-
*Marriage Officer-cum-Sub-Divisional Magistrate,
Chachyot at Gohar, District Mandi (H.P.).*

